

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:40 A.M. on February 22, 2005 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Gina Poertner, Committee Secretary

Conferees appearing before the committee:

Proponents:

Senator Ralph Ostmeyer
John Fierro, Southshore Cabin Owners Association
Geoff Withington, Smoky Hill/Saline Basin Advisory Committee
Bill Scott, Western Kansas Water Watchers

Opponents:

J. Michael Hayden, Secretary, Kansas Department of Wildlife and Parks
Tracy Streeter, Director, Kansas Water Office
LaVene Brenden, Kansas Society of Professional Engineers
David Pope, Chief Engineer, Kansas Department of Agriculture

Others attending:

See attached list.

The meeting was called to order by Chairman Carolyn McGinn at 8:40 a.m. **SB 194** was discussed and Senator Lee was asked for her amendments. Senator Lee asked if anyone has come up with a new name for the hunting permits. Chris Tymeson suggested calling them Commission Permits. Senator McGinn suggested getting through the process of approving the bill before spending time on the name, which can be done later. Senator Lee also moved to amend Line 7 on Page 2 to change the 50% to 85%, which was seconded by Senator Taddiken. The motion passed by voice vote. Senator Lee stated that she would have another amendment when the bill reaches consideration by the full Senate. This amendment would allow the organization named Farmers and Hunters Feeding the Hungry to enter the drawing but be able to keep more of the money than other organizations.

Senator Francisco made a motion to change the wording in Line 8 of Page 2 of the bill from "and" to "or." Chris Tymeson asked that "related " on Line 8 Page 2 be stricken and all of Line 9 stricken. The motion was seconded by Senator Teichman.

Senator Pyle asked for an explanation of Senator Lee's amendment regarding Farmers and Hunters Feeding the Hungry. Senator Lee explained the Farmers and Hunters Feeding the Hungry and stated that since they are social services organizations, they should be allowed to keep more money than other organizations.

The motion passed by voice vote.

Senator Teichman made a motion to move **SB 194** out of committee as amended, seconded by Senator Francisco. The motion passed by voice vote.

Chairman McGinn opened the hearing on **SB 228** and asked Raney Gilliland to give a briefing on the bill. Following this, Senator Ostmeyer was recognized to present testimony in favor of the bill (Attachment 1). Senator Ostmeyer explained that Cedar Bluff Reservoir was the major economic development source for the Trego county area.

John Fiero was then introduced to present testimony on behalf of the Southshore Cabin Owners Association (Attachment 2). Mr. Fierro discussed the benefits of bringing the reservoir under the direction of the Kansas Department of Wildlife and Parks.

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 A.M. on February 22, 2005 in Room 423-S of the Capitol.

Geoff Withington of the Smoky Hill/Saline Basin Advisory Committee was next to testify (Attachment 3). Mr. Withington stated the importance of stabilizing the region surrounding the reservoir.

Bill Scott of the Western Kansas Water Watchers was then recognized to speak (Attachment 4). Mr. Scott provided photographs of the reservoir to illustrate the impact of water levels.

Senator Lee asked to have the term "impairment" defined. John Fierro stated that impairment referred to the outflow being greater than the inflow, also termed "depletion." Senator Lee stated that impairment means prevention from getting it to where it should be. She also mentioned the Colorado lawsuit.

In the interest of time, Senator McGinn asked the Committee if they were willing to hold another meeting to hear the opponents of the bill. Senator Huelskamp asked about getting the bill referred to an exempt committee in order to finish the hearing, given the Committee deadline. Senator McGinn stated she would contact the Senate President.

J. Michael Hayden, Secretary of Kansas Department of Wildlife and Parks, was then introduced to present testimony in opposition to the bill (Attachment 5). Mr. Hayden discussed the two main factors concerning the Department on this bill. The first factor is legislative pre-emption of the Kansas Water Appropriation Act. This bill takes away the water right of downstream user and gives them to the Department without due process and without compensation. The second factor is the burden of considerable cost to the Department and to the farmers along this waterway.

Senator McGinn stated that she would schedule another meeting to hear the remainder of the conferees. The meeting was adjourned at 9:30 a.m.

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Madam Chairman and Members of your committee.

Thank you for the opportunity to appear today in support of SB 228, which would preserve Cedar Bluff Reservoir by controlling the release of water contained within.

There will be testimony today showing the economic effect of keeping the water level as close to conservation pool level (2,144 feet above sea level) and the positive effect to communities around the reservoir. Kansas Wildlife and Parks reported in 1992 a \$2.372 million impact to surrounding areas and \$14,762 million impact in 2002 when lake was at conservation level.

The public trust in state agencies is being questioned by concerned citizens about actions taken by Kansas Water Office. It is a known fact that leakage from Dam is keeping the Smokey Hill River east of Dam running.

I would hope that the 2005 Legislature support the concept of SB 228 to not allow for any additional discharge under conservation pool level (2,144 ft) other than flood control, honoring long-standing city of Russell contract and maintenance of the Kansas Department of Wildlife and Parks facilities below the dam. Every effort should be made to maintain the lake at the top of conservation pool (2,144 ft).

This lake is a major Economic Development source for Trego County and surrounding communities. Thanks for your time and consideration.

Ralph Ostmeyer

*Senate Natural Resources
2/22/05
Attachment 1*

SB 228

REBUTTAL TESTIMONY
SUBMITTED TO COMMITTEE
ON ENVIRONMENT BY
PROponents OF H.B. 2393

Date: February 22, 2005

Proponents of HB 2393 were not afforded time to rebut remarks made by the opponents due to time constraints. Please note that the only opponents were state agencies. No one else appeared opposed to the Bill.

1. Mr. Pope stated that this Bill would take water rights in violation of the Water Appropriations Act. Nothing could be farther from the truth.

The water we're talking about is the water owned by the State of Kansas stored in Cedar Bluff Reservoir and managed by KWO and KDWP. It doesn't belong to anyone else and no one else has a right to it. (See Joe Harkins' letter attached) It represents the old irrigation district's water rights that you (the Legislature) authorized the State to purchase for \$360,000 from the Bureau of Reclamation in 1989. Please recall that the irrigation district ruined the Lake by indiscriminate releases and didn't even pay for the water. The Bureau shut the district down in 1978.

All we're asking the Legislature to do is order the transfer of this water storage, that you purchased, to the management of one state agency (KDWP) rather than two (KDWP and KWO). This is not taking anyone's rights, it simply changes management and does not violate any law.

2. The Bill also would change the use of the KWO stored water from "artificial recharge" to "water-based recreation". This can be done and has been done in procedures permitted in the Kansas Water Appropriations Act and the Kansas Water Plan. The KWAA processes applications for changes to water rights and the type of use. The Division of Water Resources administers the KWAA and can be ordered by you to implement the procedure.

3. In 1994 KWO and KDWP entered into an Operations Agreement and arbitrarily decided between themselves who could and would do what with the stored water; it also discusses release procedure and public notification. This Legislature may very easily order these two agencies to change that Operations Agreement to do whatever you order. In fact, you already ordered some changes by your 2003 Session Laws Proviso, but that was totally ignored by KWO and KDWP. (See Proviso language).

4. What is so inexplicable to us is how KWO and KDWP can claim this Bill would change existing law, when these agencies violated the law and their own policies? For example:

A. Director of KWO Harkins says "Hays has no right to the water stored in the Lake", yet after 15 secret meetings, he virtually turns over the keys to that stored water (5110 acre feet) to Hays.

B. The 5110 acre feet was to be used for artificial recharge, yet the secret agreement of 9/22/04 clearly reveals that it is designed for municipal use which is not permitted. Only Hays and Russell can call for releases; no one else below the dam.

C. Instead of following the legislative intent plainly expressed in the 2003 Proviso and exploring the possibility of KWO transferring its water to KDWP, KWO gives the 5110 acre feet to Hays "for the life of the Lake".

5. Secretary Hayden warned you that, as much as he would like to have control of KWO water, he would have to raise hunting and fishing fees to pay the Bureau the "operation and maintenance" expenses presently being paid by KWO. The Secretary must have overlooked the possibility that the money you appropriated to KWO for that expense could be transferred to his budget with no problem.

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Attachment 2

Don't you all think that if this legislation was going to take away or change other people's water rights that this meeting room would be filled with opponents? In fact 15% of the membership of Western Kansas Water Watchers consists of Hays citizens. This Bill protects our water for the most beneficial use-Recreation.

Just give us a minute on the issue of "depletion". A very big item in Kansas Water Law. A "depletion situation" exists when the amount of water withdrawn from an aquifer continually exceeds the recharge. Groundwater depletion may contribute to stream flow depletion and ecosystem disruption. No one will deny that not only the water in the reservoir, but all the water above and below the dam in the Smoky Hill River aquifer is being depleted. Mr. Pope has in fact, placed all of that area including Hays in Intensive Groundwater Use Control Areas (IGUCA). This means his Division can place restrictions on existing water rights or shut them down until the situation changes. Instead of releasing state owned water from a depleted lake and allowing it to travel about 40 miles downstream, with tremendous loss along the way, wouldn't it be a greater beneficial use to keep the stored water for a dire emergency and administer the water rights west of the Lake in an attempt to increase inflow into the Lake. You can order Mr. Pope to do so.

Releasing water from a depleted Lake is a dead end. Not only will the Lake be gone in a few years, but Hays will still be looking for water. This policy doesn't make sense. After all, the KWAA, defended so jealously by Mr. Pope, has six (6) components:

#6 The Administration and enforcement of water rights, minimum desirable stream flows (MDSF) and protection of releases from reservoir storage.

We might add that while the State almost always imposes MDSFs on all Kansas Rivers, there are none imposed on the western section of the Smoky Hill because 80% of the time there is no flow.

Please help us to keep what we have here.

Respectfully submitted Proponents

By: _____
John Fierro

P.S. We were all very dismayed at the way committee member Johnson disrespected Senator Ostmeyer. Representative Johnson acted like a bully.

Good morning and thank you for the opportunity to address this committee. My name is Geoff Withington, A resident farmer/ rancher of Trego County, and member of the Smokey Hill/ Saline Basin Advisory Committee. I live in the southwest corner of Trego County along the Smokey Hill River. I am also an avid user of Cedar Bluff State Park, and have witnessed the effects evaporation and releases have had on the lake in the last few years.

I am here to express my support for SB 228.

I made a motion at a joint Basin Advisory Committee meeting last fall on Nov. 3, 2004, to direct the question to the Kansas Water Authority, that mirrors this bill. It read as follows, "...that the Kansas Water Office consider and respond to the idea of taking the KWO water appropriation of 5400 acre-feet in Cedar Bluff Reservoir for artificial recharge and apply to the Division of Water Resources to reallocate the water to recreation and other uses for Kansas Department of Wildlife and Parks, so as to take the water appropriation off the table as artificial recharge..." The motion was passed by the Smokey Hill Saline Basin Advisory Committee. This motion was made because anyone who lives out there realizes the fragile nature of the reservoir. Any release will have an immediate negative impact not only on the lake itself but on the region as a whole. I felt it necessary to make this motion when it became apparent that the City of Hays was trying to lay hold on waters in the reservoir, a reservoir in which they hold no water rights.

You will have heard or will be hearing from the Kansas Water Office that this agreement with Hays and Russell would be contrary to this bill and thus it would be very difficult if even possible to terminate this agreement. The Kansas Water Office is the holder of the water right for the artificial recharge pool. They cannot assign that right to someone else without approval of the Division of Water Resources. Last time I checked this was not done.

There is written testimony that has been submitted that addresses the magnitude of the economic impact this reservoir has for the region. I would like to focus on concerns and issues brought forth by the DWR, KWO and KDWP.

Mr. Pope has expressed concerns that this bill will override the authority of the Division of Water Resources granted by the Kansas Water Appropriations Act. This bill does not take away the technical legal authority of DWR to properly administer water rights. It does take away the ability to use a fragile ecosystem, such as Cedar Bluff Reservoir, as a political bargaining chip with, when you boil it down, the City of Hays. If an impairment were filed by a water right holder below the reservoir it would certainly still be within the authority of the DWR to investigate that claim, determine the validity of the claim and take the appropriate formal administrative action in regards to that impairment. This will also force the DWR to actually determine which water right along the system is actually causing the impairment. This bill does not conflict with those duties.

Mr. Pope threatened, in ^{Nov.} ~~October~~ of 2004 at a joint special committee hearing in Wakeeney, Ks that "... we can do this the easy way, or we can do this the hard way.." To me and the Kansans I am here representing, that is a very troubling statement from the head of a state agency such as the DWR. Perhaps we should be looking at doing the right

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Attachment 3

thing instead. Mr. Popes statement is very telling as to what the attitude of his agency appears to be in regards to Cedar Bluff, that is, taking the easy way out. That is why we are here today. Using Cedar Bluff Reservoir as a fence mender between the State and the City of Hays is the easy way out of a political snafu for the DWR. It certainly is not the right way, as we have heard Cedar Bluff reservoir is not a viable source for Hays' supposed water problems.

Between Mr. Pope, Mr. Hayden and Mr. Streeter it has been painted that this bill would set a "dangerous precedent" of "special interest groups" taking water rights from others through lobbying for legislation. Let us be very clear here today, Hays holds NO water rights in Cedar Bluff Reservoir. Furthermore this bill specifically speaks of the water rights held by the City of Russell and includes them as one of the exceptions. This bill is transferring a water right from one State agency to another. Neither Mr. Hayden nor Mr. Streeter hold water rights in Cedar Bluff. Their respective agencies hold in trust for the people of the State of Kansas those water rights. If this bill becomes law the people of the State of Kansas will continue to own those water rights. Maintaining this reservoir at the highest possible level Mother Nature will allow helps ensure the viability and life of water rights below the reservoir.

Mr. Hayden has expressed concern over the operations and maintenance cost associated with the reservoir. The KWO currently is paying a proportionate share of these costs to the US department of the Interior, Bureau of Reclamation using State water plan funds. Mr. Goossen, Director of the Budget, has commented on this issue in a letter addressed to Representative Freeborn, Chairperson of the House Committee on the Environment. The solution would come in the way of appropriating those funds to the KDWP instead of the KWO. This certainly would not be an unprecedented event. Again I would like to point out that we are talking about shifts between State agencies, not new costs or expanded costs.

By this point everyone should be well aware of the unreliability of Cedar Bluff Reservoir as a source for water. But what many do not know is that the reservoir itself gives life to the river below. Continual seepage provides a constant recharge to the river. Look at the time and money and effort spent by the associated State agencies and the City of Hays to secure agreements for a water source that holds no promise of stability. The reservoir is being used as a political bargaining chip. There is too much at stake for the life of the State park itself, surrounding development and other economic impacts for the region. We must not let this threat continue we must do all we can to bring whatever stability possible to the region surrounding Cedar Bluff Reservoir. Please support this passage of this bill.

Again I thank you for your time and would welcome the opportunity to visit with any of you if you have any questions.

W. Geoff Withington
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Madam Chairman and Environmental Committee

I am Bill Scott; Ransom, Kansas, a lifetime resident of Ness County having lived on a farm northeast of Ransom, near Cedar Bluff Lake. As I grew up, one of the exciting times was fishing the Smokey Hill River and then watching Cedar Bluff Dam being constructed during the late 1940s.. Therefore I have a vivid picture of the area, the dam structure and how it came together. *President, Western Kansas Water Watchers*
I am here to support ~~House~~ ²²⁸ Bill No. ~~228~~ which would transfer the water controlled by the Kansas Water Office to the Kansas Dept. of Wildlife and Parks. Cedar Bluff Reservoir has been a political football for many years, and it is time that it be taken off the table as a viable source of municipal water. All studies have shown that it is not a dependable source for any length of time. However it has proven itself over the last 55 years to be a very source for recreation and quality of life not only to Western Kansa but to the entire region.

E1 The economic impact of Cedar Bluff Reservoir is estimated to be 45 million to the region. The State Park system in Kansas has an impact of \$685 million. Past records indicate that park visitation, revenue and economic impact are directly dependent to the lake water level. Data shows that park visitation peaks when the lake is at conservation pool level of 2144 feet.

At the lakes lowest level in 1992, 2093 feet,, visitation was only 46,525 and a \$2,372,000 economic value but in 2002 with the lake at 2143 feet, the visitation was 218,946 and a \$14,762 000 impact to the area. That is a 1,137 % increase.
289,461

The lake is now nearly 9 feet below conservation level. Park Revenue dropped from \$354,000 in 2003 to \$303,312 for 2004. Visitation dropped from 272,000 in 2003 to 237,225. State sales tax value went from \$502,936 in 1991 to \$2,531,359 in 2003 at the lakes peak. A direct correlation between water level and income generated.

I work part time at the Cedar Bluff State Park in season selling permits. I have seen visitors from all over the U.S. Many come from Colorado and Denver. They say because we have water.

E2 Fishermen come to Cedar Bluff because of its quality of fishing, and fantastic fisheries habitat at conservation pool level. This map appeared in The In Fisherman In May of 2004 a national publication showing Cedar Bluff as one of the better bass lakes in the region Cedar Bluff brought bass fishermen from 8 states to a national qualifying tournament. By their own figures they spent over \$196,000 in the area.

E3 This; map show what is actually happening at Cedar Bluff Lake. There has been no inflow into the lake for 18 out of the last 36 months, 2002 through 2004. However the river below the dam has had a steady flow of over 4 CFS during all that period. It never stops. This is a flow that is caused by water level in the lake. The law of gravity draws the water down and under part of the dam structure to resurface 1/2 mile down stream below the dam. From there it keeps the river channel recharged to the Hays well fields.

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Attachment 4*

E 4 Watershed Dams Help Ron Allen This article states that data shows a direct correlation between water depths in the reservoir and groundwater levels downstream. The Division of Water Resources ,KDA report concerning dams “the total runoff passing downstream sections is reduced, but the effective available water to the downstream area is increased and conditions, such as ecosystems, and surface water uses are improved as well.

E 5 A paper written by John W. Reh 9/15/04 cites an example of this filtering process in a Brown County Walnut Creek Project. They found that the dams would trap 95% of the sediments entering the lake. The clean water leaving the dams actually restored the river channel to their natural state of gravel bottoms, beginning close to the dam then within a few years the sediment deposits were migrated out of district. Simply put, the higher the water level in the lake, the more water flows through the sands and structure under the dam and cleans any sedimentation from the river channel downstream from the dam. More water, cleaner water.

E6 These two charts show the river flow at two points above and below Cedar; Bluff Lake as of 1/10/05. The Arnold guage is 9 miles above the lake, notice no inflow. The Schoenchen guage is 25; miles below the dam. Notice the flow of 5CFS. There are absolutely no tributary streams in that 25 miles to feed the river.

Because of all this data, it is very important that we pass this bill 2393. Not only to protect the flow of the river downstream, with clean water, but to protect the economic value of this great lake.

What; affect would this bill have on downsteam users? We have proof that the river is already being recharged downstream for at least 25 miles. There is no need for release of water to recharge the river.

E7&E8 A report in the Hays Daily News written by Mike Corn, 2/13/05 states that “the rush to find new water is not an emergency. Engineers in 2003 determined that Hays as well as Russell had a fairly adequate supply of water for the near future.” “The Bartlett and west study found that Hays had enough water to last until 2020, based on fairly optimistic growth rates. Based on rates seen over the past 20 years, however would suggest that the water supply would be adequate even longer. The important point is that the city; has sufficient capacity to accept new term planned growth demands while maintaining its current conservation ethic.”

The same report found that Russell has enough water for several years perhaps until 2050, depending on the growth rate.

Therefore the conclusion has to be ----save this jewel in Western Kansas – for all the people.

Please support House Bill 2393. Thank you

Bill Scott 2/15/05

KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on SB228 Relating to Cedar Bluff Reservoir
To
Senate Committee on Natural Resources**

**By J. Michael Hayden
Secretary
Kansas Department of Wildlife and Parks**

February 22, 2005

SB 228, AN ACT concerning the preservation of Cedar Bluff Reservoir and controlling the release of water contained therein.

The Department would like to thank the Committee for recognizing the importance of recreational use of water in Kansas to local and regional economies. Throughout the state, public water bodies are both popular destinations and important components of economic diversity. Too often that fact is overlooked and we applaud the Committee for recognizing the importance of recreation as not only a quality of life issue for the public, but as an important component of the State's economy.

Cedar Bluff Reservoir is one of the best examples of the economic importance of public water bodies in Kansas. Due to its location, Cedar Bluff is an important resource to a large portion of western Kansas. The Department testified before the interim Special Committee on the Environment at the hearings this past fall on this issue focusing on the economic importance of the lake as a recreational resource. The economic benefit of the lake to the region is dependent upon on visitation and visitation is dependent upon lake level. That message is clearly captured in the legislation and again we thank the Committee for recognizing that important fact.

The Department would like to make sure it is understood that we have an interest in the eventual transfer of the majority of the water rights held by the Water Office to the Department. Specifically, the water in the Joint Use Pool that we share responsibility for with the Water Office. However, there are several unintended consequences of this legislation which place the Department in a position that it must oppose the bill.

First, with specific reference to the 5,400 acre feet of water (now 5,110 due to sedimentation) in what is termed the Artificial Recharge Pool, the Department has no interest in assuming responsibility for that water. There may be instances, under existing statutory

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Attachment 5*

authority, where water could be required to be released or passed through the lake because of downstream water rights. Therefore, the State would be placed in a situation where conflicting laws exist. In this scenario, existing water law might require a release to be made but this legislation would make it unlawful to do so. In addition, at the time the State acquired these water rights a commitment was made to the federal government to maintain a pool of water to address downstream needs. We do not believe we are the appropriate agency to administer that water right.

Secondly, there are costs associated with the transfer of these water rights. At all federal reservoirs where the State has contracted for water storage, the federal government passes on a portion of the operation and maintenance (O&M) charges for that lake to the State. In this case, the Bureau of Reclamation charges the State for a portion of the O&M costs based upon the percentage of the water rights held by the State at Cedar Bluff. Currently, both the Water Office and the Department of Wildlife and Parks pay a portion of these O&M charges. The most recent bill totaled \$116,074.56, \$64,411.01 by Wildlife and Parks and \$51,663.55 by the Water Office. To instantly absorb those increased costs into the Department's current budget for the areas we manage at the lake would cause serious problems for Cedar Bluff State Park and Cedar Bluff Wildlife Area. Again, the economic benefit is based on the number of visits to the lake and we do not want to discourage visitation by impairing our ability to provide the services the public desires. We have discussed the issue of O&M payments with the Water Office and are in agreement to assume those responsibilities after three fiscal years.

Finally, the most significant aspect is this legislation is in essence an act of the legislature appropriating a water right because of public pressure to use it differently. The Department is concerned as this sets a dangerous precedent and potentially undermines water law in the State. The Department is opposed to using legislation to transfer water rights.

For these reasons, the Department respectfully requests the Committee to not pass this bill. Instead, the Department is prepared to work with the Kansas Water Office and the Department of Agriculture, Division of Water Resources to ultimately transfer the water rights in the Joint Use Pool from the Water Office to the Department of Wildlife and Parks.