

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Ralph Ostmeyer at 8:30 a.m. on February 10, 2011, in Room 159-S of the Capitol.

All members were present except:

Senator Steve Morris, Excused

Committee staff present:

Tamera Lawrence, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Heather O'Hara, Kansas Legislative Research Department

Laura Younker, Kansas Legislative Research Department

Dana Wethington, Committee Assistant

Conferees appearing before the Committee:

Greg Foley, Executive Director, State Conservation Commission

Christopher Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks

Tracy Streeter, Director of the Kansas Water Office

Mark Rude, Executive Director, Southwest Kansas Groundwater Management District #3

Others attending:

See attached list.

Greg Foley, Executive Director, State Conservation Commission, introduced Steve Frost, Water Conservation Program Manager, to talk about the Water Transition Assistance Program (*Water Right Transition Assistance Pilot Project Program, FY2011 Legislative Report*) and the Conservation Reserve Enhancement Program (CREP). Both programs involve voluntary retirement of water rights. In the Water Right Transition Assistance Program, Rattlesnake Creek Basin is a targeted area with issues involving federally held senior water rights owned by the US Fish and Wildlife Service that could affect many junior water users in the basin. Voluntary retirement of water rights is one of the tools to provide an incentive to lessen Consumptive Water Use. Program has been in effect four years. Another area targeted was Prairie Dog Creek in Northwest Kansas where the issue was the state's compliance with the Republican River Compact. Other areas are being identified by the Chief Engineer. He talked about the costs of retiring water usage. Pilot program is set to expire June 30, 2012. Discussion followed.

Mr. Frost also talked about the CREP program. (*Upper Arkansas River Conservation Reserve Enhancement Program Performance Report by the State of Kansas October 1, 2009 – September 30, 2010*). CREP does not allow dryland farming. It is a federal-state partnership to enroll fields and grass for contracted period of 14-15 years for conservation. Conserving water is the primary resource management objective, but it also helps conserve soil, energy and helps protect wildlife habitat. Many other state agencies are partners, among which are KDHE, Division of Water Resources, Geological Survey, plus private partners such as Pheasants Forever. The project area is 10 Western Kansas counties along the Arkansas River and with soil types that are eligible for land cover. One of the main purposes of the State Conservation Commission has been to develop land treatments that promote all types of conservation. Over the three years, the program has enrolled 10,766 acres. FSA has granted approval to increase rental rates, which may increase enrollment, and FSA has approved increasing project size from 20,000 acres to 28,900 acres. Have seen a high level of enrollment in three of the 10 counties. So far have retired 22,162 acre-feet and 93 irrigation wells.

Discussion on both programs followed.

SB 123 - Establishing fees for wildlife and parks cabins

Chairman Ostmeyer opened hearing on **SB 123**.

Revisor Tamera Lawrence gave an overview. It would change existing law to allow the Secretary of Wildlife and Parks to directly set fees for the use of cabins owned or operated by the Kansas Department of Wildlife and Parks (KDWP). Current law requires the Secretary of Wildlife and Parks to set cabin fees

CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 8:30 a.m. on February 10, 2011, in Room 159-S of the Capitol.

through the administrative rules and regulations process. The bill would exempt the setting of cabin fees from the Rules and Regulations Filing Act (KSA 77-415 through 77-437). The maximum fees for use of KDWP cabins could not exceed \$250 per night; \$1,500 per week; and \$5,000 per month.

Christopher Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks, presented testimony in support of the **SB 123**. (Attachment 1) The Department would have increased flexibility to market the use of public cabins with the intent of increasing revenue and encouraging people to enjoy the Kansas outdoors. He stood for questions.

There being no further conferees, Chairman Ostmeyer closed the hearing for **SB 123**.

Senator Ostmeyer called for final action of **SB 123**.

Senator McGinn made a motion, seconded by Senator Francisco that **SB 123** be passed out favorably; motion carried.

SB 122 - Authorizing the director of the Kansas Water Office to grant easements on state property on the Arkansas, Kansas and Missouri rivers

Chairman Ostmeyer opened the hearing on **SB 122**.

Revisor Tamera Lawrence gave an overview. The bill would authorize the Director of the Kansas Water Office to grant easements on state property for construction and maintenance of conservation projects with cooperating landowners. State property would be defined as real property currently owned in full or in part by the state in the Arkansas, Kansas, or Missouri rivers in Kansas, in and along the bed of the river to the ordinary high water mark on the banks.

Tracy Streeter, Director of the Kansas Water Office, spoke in support of **SB 122**. The three navigable rivers, Arkansas, Kansas and Missouri, are owned by the state of Kansas. The law would be a benefit to the landowners and the state of Kansas when landowners want to apply for and receive federal funding and permit for a project to solve bed and bank degradation. (Attachment 2) Mr. Streeter stood for questions.

Greg Foley, Executive Director, State Conservation Commission, spoke in support of **SB 122**. (Attachment 3) Mr. Foley said the bill would benefit individual landowners who want to stabilize streambanks on their property to prevent further encroachment of the river into their property. Mr. Foley stood for questions.

Kevin Newkirk, CK Processing, Manhattan, KS, provided written testimony in support of **SB 122**. He wrote that streambank erosion causes soil loss, which increases pollution in streams and rivers. (Attachment 4)

Mark Rude, Executive Director, Southwest Kansas Groundwater Management District #3, provided testimony in opposition of **SB 122**. (Attachment 5) He said the language is too broad, although he supports the intent of the bill. Mr. Rude stood for questions.

There being no further conferees, Chairman Ostmeyer closed the hearing for **SB 122**.

Chairman Ostmeyer announced the next meeting is scheduled for February 17, 2011.

The meeting was adjourned at 9:30 a.m.

SENATE NATURAL RESOURCES COMMITTEE

Guest Roster
Feb. 10, 2011

Name	Representing
Jason Norquest	GMD3
CHRIS LAI	GMD3
Hal Scheuerman	GMD3
Mike OBrato	GMD3
Clay Scott	" "
Steve Sten	GMD3
Mike McPhee	GMD3
John Peterson	Cyril Stutzman
Kim Christiansen	KWO
STEVE FROST	SCC
Rob Reschke	SCC
Melissa Ward	Hin Law Firm
Earl Leent	KWO
Paul Gravel	KDA
Chris Tymen	KDWA
Sean Miller	CAPITOR STRATEGIES
Nancy Jane Stankiewicz	ETHANOT ASSOC.
Mark Stock	KDWP
Kelli Maydew	KLA
Galen E Boory	KRWAD#1 KURBWAD#3

Please use Black ink.



**Testimony on SB 123 relating to KDWP Cabins
To
The Senate Committee on Natural Resources**

**By Christopher J. Tymeson
Chief Legal Counsel
Kansas Department of Wildlife and Parks**

February 9, 2011

SB 123 seeks to remove cabin fees from the regulatory process and implement a process that provides additional flexibility in adjusting, in a timely manner, the fees charged for Department cabins for public use at various state parks and public lands. The Department currently has 94 cabins with an additional 20 planned for 2011. **The Department supports the provisions contained in the bill.**

Currently the fees for the use of the public cabins are established through the Administrative Rules and Regulations process. The current listing of cabin camping permit fees is established within K.A.R. 115-2-3a. Each cabin has its own established fee and the fees vary by location and by time of year, but to change any fee requires utilization of the cumbersome rules and regulations process. This is a time consuming process and does not allow KDWP to adjust a fee for market conditions such as decreased demand of certain cabins or to provide market incentives such as allowing "package" promotion fees for underutilized cabins.

The provisions of Senate Bill No. 123 allow KDWP to obtain approval from the Kansas Wildlife and Parks Commission for fee changes after a public meeting to discuss any changes being considered by the Department. In addition, the fees to be approved could not exceed the maximums established within the Bill. The KDWP Commission meets a minimum of six times per year which increases the ability of KDWP to provide appropriate fees in a timely manner without the delay of obtaining approval through the administrative rules and regulations process.

In addition, it should be noted that as an on-going process, the KDWP is still adding cabins for state parks and public land and the regulatory process can delay the opening of new cabins until the permit fees can be established.

In summary, the Department would appreciate having increased flexibility to market the use of public cabins with the intent of increasing the revenue generated by such use as well as encouraging people to get outdoors and enjoy all that Kansas has to offer. **The Department appreciates the support of the Committee in passage of the bill.**



**Senate Natural Resources Committee
Testimony on Senate Bill 122
Easement Authority on State Property for Conservation Projects
February 10, 2011**

Chairman Ostmeyer and members of the Committee, I am Tracy Streeter, Director of the Kansas Water Office (KWO). Thank for the opportunity to appear before you today in support of Senate Bill 122, which provides the KWO Director with the authority to work with landowners adjacent to our three navigable rivers on projects proposing to stabilize the rivers' beds and banks.

It is well settled in Kansas and US law that the State owns the bed and banks, up to the ordinary high water mark, of the three navigable rivers in Kansas- the Arkansas, Kansas, and Missouri. The United States Supreme Court (Holt and subsequent cases) holds that the state owns title to the streambed of a navigable river. Kansas Supreme Court rulings are parallel. Navigability is defined according to these cases as well: the stream must be navigable in fact, in its natural condition, as a highway of commerce, at the time of statehood.

As a result, a riparian landowner (one who owns land on a navigable river in this case) needs an explicit grant of property from the state to access the river up to its banks. Normally, this has been done by legislation, wherein the Secretary of State grants the easement to the landowner, allowing him to access the river. Senate Bill 122 proposes to streamline the process for conservation projects by allowing the Water Office Director to grant the easements on behalf of the state of Kansas.

The impetus for the proposed legislation stems from recent project proposals along the Kansas River whereby the four riparian landowners have initiated funding requests from the USDA, Natural Resources Conservation Service and have requested Stream Obstructions Act Permits from the Kansas Department of Agriculture, Division of Water Resources for bank stabilization projects. In each of these four instances, funding contracts with NRCS were terminated and permits were unable to be issued due to the fact the applicant (riparian landowner) was not the legal owner of the entire project area which includes state property below the ordinary high water mark.

Successful passage of SB 122 will allow these landowners and subsequent landowners to apply for funding and receive permit consideration for projects providing mutual benefits to the landowner and the state of Kansas. In the case of the Kansas River, bed and bank degradation is a serious concern and is a priority issue in the Kansas Water Plan.

Thank you again for the opportunity to appear before you today in support of Senate Bill 122. I will stand for questions at the appropriate time.

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Greg A. Foley, Executive Director

State Conservation Commission

Sam Brownback, Governor

Testimony on SB 122

Authorizing the director of the Kansas Water Office to grant easements on state property on the Arkansas, Kansas and Missouri rivers.

to the

Senate Natural Resources Committee

by

**Greg A. Foley
Executive Director
State Conservation Commission**

February 10, 2011

Chairman Ostmeyer and members of the Committee, thank you for the opportunity to testify in support of SB 122. The State Conservation Commission (SCC) is responsible for implementation of many natural resource protection programs. The SCC administers the Riparian and Wetland Protection Program and partner with the Natural Resources Conservation Service through EQIP, which both fund leading best management practice to reduce soil losses from streambanks that transport downstream adding to sedimentation of water supply impoundments, federal reservoirs and/or impact total maximum daily loads.

The passage of SB 122, or similar language, would be beneficial to private landowners that have property adjacent to a navigable river. The SCC has encountered three individual projects that have requested technical and financial assistance to design and install streambank stabilization measures on their property to prevent further encroachment of the river into their property. The problem that we are trying to solve is the land from the high water mark inward to the river is actually state owned property. With part of the project being on private and part placed within the streambed, the landowner does not have authority or permission to install a practice to protect his/her own land from sloughing off and changing the property lines for the state. In my opinion, the mission of the proposed process will prevent significant survey costs for each individual landowner and every project would be required to come before the Legislature to have a specific law passed authorizing each project.

Chairman Ostmeyer and members of your committee, thank you for the opportunity to appear before your Committee today. I will stand for questions at the appropriate time.

cc: SCC Commissioners

Senate Natural Resources
2-10-11
Attachment 3

February 9, 2011

Kevin Newkirk
CK Processing
3490 Swamp Angel Road
Manhattan, KS 66502

Senator Ralph Ostmeyer, Chair
Senate Natural Resources Committee

Dear Chairman Ostmeyer and Senate Natural Resource Committee Members:

I am writing in support of SB 122. Conservation projects within Kansas' navigable waterways are currently prohibited because no State agency is authorized to grant easements allowing construction within the waterways. It is vitally important that conservation projects be allowed in and along navigable waterways. Ironically, conservation projects were permitted along Kansas' navigable waterways until only recently. Please pass SB 122 so conservation projects can resume.

Farmland is one of Kansas' most valuable resources. Streambank erosion causes soil loss, which then becomes pollution in Kansas streams and rivers. Brock Emmert of The Watershed Institute recently estimated that our farm lost over 17 acres of prime farmland along the Kansas River at two specific sites between 1991 and 2008. 396,099 cubic yards of soil was lost, which equals nearly 26,000 semi truck loads of soil. Brock estimated the streambank erosion rate at 9.1 feet per year at one site and 6.1 feet at the other site.

Streambank stabilization projects are effective methods of preventing soil loss and establishing stable, environmentally beneficial streambanks. Three such projects have either been completed or are in the process of being completed on our farm. Partial funding for those projects came from National Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP). This program combines expertise from NRCS, The Watershed Institute and experienced contractors to design and implement streambank saving measures. The resulting streambanks are stable and covered with wildlife friendly vegetation. Riparian and grass buffer strips along rivers and streams hold soil in place and filter fertilizer and other agricultural chemicals out of water so it never enters the stream resulting in cleaner water from reduced sedimentation and chemical pollution.

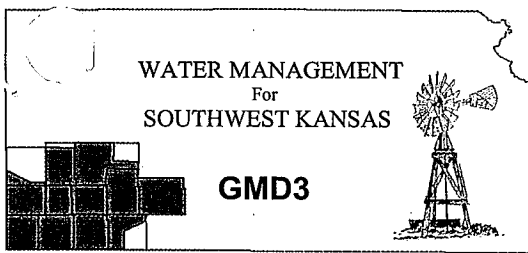
Please call me at 785-776-9269 or email at kevinjn@ksbroadband.net if you have questions or comments. I am eager to provide additional information regarding this important bill.

Sincerely,



Kevin Newkirk
Manager, CK Processing

Senate Natural Resources
2-10-11
Attachment 4



Southwest Kansas
Groundwater Management District No. 3
2009 E. Spruce Street
Garden City, Kansas 67846-6158
(620) 275-7147 phone, (620) 275-1431 fax
www.gmd3.org

Testimony on Senate Bill 122

to

The Senate Committee on Natural Resources

By

Mark E. Rude, Executive Director

Southwest Kansas Groundwater Management District No. 3

February 10, 2011

Chairman Ostmeyer and members of the committee, my name is Mark Rude. I am executive director of the Southwest Kansas Groundwater Management District No.3 (GMD3). I am providing testimony in opposition of Senate Bill 122.

The many issues associated with the question of right to access and use of state property along the three riverways in Kansas designated as navigable streams continues to be a very significant set of unmanaged property interests that are both public and private in nature, and reach far beyond the good purposes of this bill. In many cases along the sometimes dry Arkansas River, the very issue of property boundaries is a matter for which reasonable and knowledgeable people can and do disagree.

For your benefit, I have attached a copy of a KSDA/DWR memorandum written by staff council Leland Rolfs to John Gottschamer of the Water Office, which outlines some of the considerations regarding this state resource and state – private property owner relationship for these areas. I have also provided copies of a map constructed about the same time that serves to illustrate the situation on the Arkansas River in SW Kansas where the physical conditions of what may have been considered bed and banks of the river have significantly changed over time based on survey and air photo work in four sections of property along the river.

SB 122 is a laudable effort to provide an administrative remedy to the access authority problem that landowners adjacent to the navigable streams face when the river begins cutting into their property or field and some stream bank stabilization structures are needed to prevent bank erosion. Because of the morass of issues that exist as outlined in the above referenced memorandum, I stand in opposition to the scope and implications of the language, but in support of the efforts to facilitate the proper work of adjacent landowners to stabilize the stream banks.

I'll stand for questions at the appropriate time. Thank you for this opportunity to provide these comments.

Senate Natural Resources
2-10-11
Attachment 5

KANSAS STATE BOARD OF AGRICULTURE
DIVISION OF WATER RESOURCES

RECEIVED

DEC 22 1993

MEMORANDUM

Field Office
Division of Water Resources
Garden City

TO: John Gottschamer

DATE: December 22, 1993

FROM: Lee Rolfa *LR*

RE: Arkansas River Corridor
Committee

The committee has identified the following basic issue:

**THE STATE OF KANSAS HAS NOT DESIGNATED ANY ENTITY OR PERSON TO
BE RESPONSIBLE FOR THE MANAGEMENT OF MANY TRACTS OF LAND
OWNED BY THE STATE OF KANSAS**

The following issues or concerns should be addressed:

1. How much property does the state of Kansas own which is not actively supervised and managed by any particular entity? These tracts would include the Arkansas River, the Kansas River, and the Missouri River, up to the ordinary high water mark.
2. The property which the state owns in these areas needs to be identified both legally and physically. This location would include identification of both the width of the river at any point and the location of the thread of the stream. It is clear that the state owns some interest in these navigable streams, but the nature and extent of that interest is not clear. An effort should be made either legislatively or judicially to establish the state's legal ownership interest in the bed and banks of these rivers up to the ordinary high water mark. Can the interest be extinguished by reliction (diminishment of the flows)? Does the answer depend on whether the reduction in flows occurred naturally or was caused by the activities of man, either in Kansas or in another state?
3. Should a legislative definition of the "ordinary high water mark" be sought using an engineering basis (such as the flow caused by a two year frequency storm unaffected by the activities of man)?
4. Once the physical boundaries of the state's property are identified, should they be marked or fenced in any manner? Who would do this? How would it be funded? Who would oversee the fencing and its maintenance, if not the property itself?
5. The citizens of the state are allowed to use state property for recreation. It is important for the adjoining landowners to know where the boundaries of state owned property are so that citizens do not trespass on private property adjoining the land owned by the state. Conversely, it is important that private interests (possessory or business) do not trespass upon the state.
6. From our preliminary discussions, it is apparent that the state may be losing large amounts of revenue from items such as:
 - a. oil and gas royalties from wells located on state owned property;
 - b. sand and gravel operations removing aggregate from state owned property, especially operations that are not located directly in an active stream channel but which are still on state property;

- c. lease payments for agricultural uses being made of state owned property such as grazing, farming, irrigating, wood cutting operations and recreational activities.

There may be considerable amounts of revenue that the state of Kansas is forfeiting by not actively managing the state owned property.

7. Apparently there is no consistency between state agencies in identifying the boundaries of state owned property, depending on the various activities which they administer or permit. For example, it appears that counties attempt to assign ownership to private individuals as close as possible to the streams listed above in order to maximize county tax revenues. This may conflict with the state's overall interest in wanting to utilize more of this land for public recreation or other purposes.
8. There is apparently no state entity which has the authority to lease state land, without express legislative authorization, for the construction of projects, such as: levees, boat ramps, road crossings, pipeline crossings, bridges or any other projects on state owned property.
9. It is not clear what jurisdiction Wildlife and Parks has over state owned land. K.S.A. 32-807(m) provides the Secretary of KDWP the

"authority, control and jurisdiction over all matters relating to the development of conservation of the natural resources of the state insofar as it pertains to forests, woodlands, public lands, submarginal lands, prevention of soil erosion, habitats and the control and utilization of waters, including all lakes, streams, reservoirs and dams . . ."

It is not clear what the legislature intended for KDWP to have control over navigable rivers because it did not use the term "navigable waters" in the above statute. The legislature also designated the Secretary of State as the party to purchase or sell the river and specifically passed legislation regarding the construction of boat ramps, weirs, etc.

10. If the state's ownership in this property is legally and physically identified, it would probably be in the state's interest to enter into maintenance activities, such as: channel clearing, dredging, construction of jetties, levees and riprap to ensure that the river stays within the boundaries of the property owned by the state. Obviously, this requires staff for engineering studies and money for construction.
11. Property owned by the state of Kansas needs to be monitored for unauthorized activities, particularly those which would be injurious to the value of the property, such as: pollution, dumping, illegal channel changes, construction of illegal levees, and other unauthorized uses.
12. The only statute which refers to state responsibilities for state ownership of the bed and banks, is K.S.A. 82a-201 *et seq.* According to this Act, when a navigable river changes course in a flood (by avulsion) it is the responsibility of the Secretary of State to sell the old channel and purchase the new channel. This has occurred only a few times when a controversy has arisen. The Secretary of State is not staffed to perform this function on a routine basis after every flood on every river. Determination of how the river channel changed may be very time consuming and expensive, especially if many years and many floods have occurred since the last determination.

Memorandum to John Gottschamer
December 22, 1993
Page No. 3

Recommendation

An inter-agency technical committee should be appointed to identify the extent and location of state owned property which is not actively managed, assess the value of the property and the cost of actively managing it. The committee should then make some recommendation to the legislature as to what needs to be done, such as creation of either a Public Land Management Agency or division in some other state agency to manage unmanaged state property.

It may well be that revenues would be generated from active management of this property in an amount sufficient to fund the activities of this agency, or provide a surplus. Apparently no state agency currently has the authority, expertise or staff resources to take on the responsibility of managing this orphan state property. This technical committee could begin by researching how other states manage their state owned public lands.

LER:bs

pc: Steve Hurst
David L. Pope
Wayland Anderson
George Austin
Guy Ellis
✓ Mark Rude
DeAnn Hupo-Seib
Constance Owen

