

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 15, 2001 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Dr. Charles Perry, US Geological Survey, Water Resources Division, 4821 Quail Crest Place, Lawrence, KS 66049
Walt Aucott, District Chief, US Geological Survey, Water Resources Division, 4821 Quail Crest Place, Lawrence, KS 66049
Senator Janis Lee
Dr. Ron Hammerschmidt, Director, Division of Environment, KDHE, Forbes 740, Topeka, KS 66620-0001
Leslie Kaufman, Kansas for Common Sense Water Policy, 2627 KFB Plaza, Manhattan, KS 66505-8508
Terry Leatherman, KS Chamber of Commerce & Industry, 835 SW Topeka Blvd., Topeka, KS 66612-1671
Charles Benjamin, Sierra Club, KS Chapter, PO Box 1642, Lawrence, KS 66044-8642
Laura Calwell, President, Friends of the Kaw, PO Box 1612, Lawrence, KS 66044
Dwight Metzler, 900 SW 31st Suite 325A, Topeka, KS 66611
Edward Rowe, League of Women Voters of KS, 919 ½ S. Kansas Avenue, Topeka, KS 66612
Mike Calwell, Kansas Canoe Association, PO Box 1612, Lawrence, KS 66044

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. in room 519-S. She welcomed Mr. Dan Kahl and a group of about 30 members of the Kansas Environmental Leadership Program (KELP) to the committee. They were attending and observing the meeting today as part of their program. She announced that **SB237** will not have discussion and possible action today as stated in the agenda. The Revisor of Statutes, Mary Torrence is unable to attend today's meeting.

The Chairperson welcomed Dr. Charles Perry and Walt Aucott, District Chief, US Geological Survey, to the committee, they gave a presentation on Stream Flow Analysis. Dr. Perry explained Kansas stream flow data and provided maps of streams which were color coded, red, green and blue. He explained stream flow, (volume of water passing a point on the stream), stream gaging at specific points on a stream and stream statistics. (See attachment 1)

The Chairperson thanked Dr. Perry and Mr. Aucott for their presentation and opened hearing on **Senate Substitute for SB204.**

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

The Chairperson welcomed Senator Janis Lee to the committee. She testified in support of the bill and believes we need a process to reevaluate stream segments to be certain we are regulating where necessary; a system that uses stream flow data and good science to identify stream segments in need of protection and assure that those are protected; and, as a state, need to put our resources where they will make the biggest contribution to improve the water quality. (See attachment 2)

CONTINUATION SHEET

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Dr. Ron Hammerschmidt, Director, Division of Environment, KDHE, was welcomed. He testified in opposition to the bill and addressed a number of concerns the department has with the bill. He believes there are problems with establishing or determining the designation for primary or secondary contact recreation use using public access as a criteria. There is an additional concern of impact on downstream property owners and users. The designation of secondary contact based upon property access may create a checkerboard effect with alternating designations or perhaps a uniform adoption of the lesser secondary contact designation. There appears to be conflicts with the current requirements of KSA 82a-702 which mandates the waters of the state belong to all citizens of the state. The devolution of the authority to set a recreational use based upon access appears to conflict with this long established state law. In addition to these concerns the department remains concerned with potential negative impacts on the NPDES program and other water protection programs. (See attachment 3)

Leslie Kaufman, Kansas For Common Sense Water Policy, was welcomed to the committee. She testified in support of the bill and believes the bill is a reasonable, balanced compromise that works for all Kansans and targets the state's resources to improve water quality. She believes this bill does two things: (1) defines what is considered a classified stream segment based upon stream flow data and sets forth a schedule for KDHE to review the current classifications; (2) outlines what designated uses of classified stream segments should apply in Kansas and sets forth a schedule for KDHE to conduct the work. All current classifications and designations remain in effect until KDHE conducts its reviews. Water quality will be protected while KDHE works. Further, KDHE has the resources to conduct the work. (See attachment 4)

Terry Leatherman, Kansas Chamber of Commerce and Industry, was welcomed. He testified in support of the bill. The Kansas Chamber has been very concerned about the actions of the federal Environmental Protection Agency this past summer and fall regarding water quality issues in Kansas. Overall, the EPA efforts are an example of Washington D.C. at its worst, imposing sweeping changes in water regulation, with little positive environmental impact, and without the direction of Congress. In September, the EPA action prompted the KCCI Board of Directors to support a policy statement opposing this federal takeover of the state's responsibility to regulate the water quality in Kansas. In light of the EPA actions, state legislation to clarify and direct the Kansas Department of Health and Environment in managing state water quality is needed. (See attachment 5) Questions and discussion followed.

Written only testimony in support of the bill was submitted by; Jamie Clover Adams, Secretary of Kansas Department of Agriculture (See attachment 6); Edward Moses, Kansas Aggregate Producers' Association (See attachment 7); Kerri Ebert, Kansas Agricultural Alliance (See attachment 8)

Written only testimony in a neutral position to the bill was submitted by Steve Williams, Secretary of Kansas Department of Wildlife and Parks. (See attachment 9)

The Chairperson welcomed Charles Benjamin, Sierra Club, Kansas Chapter, to the committee. He testified in opposition to the bill. He believes the intent of the bill is to exempt intermittent streams from the protections of the federal clean water act. That intent runs counter to the intent of Congress when they passed the Clean Water Act. Furthermore, federal judges in circuits throughout the United States have determined that intermittent streams are "navigable waters" and fall under the jurisdiction of the federal Clean Water Act. Also, he believes if the committee recommends the bill, as amended by the Kansas Senate on March 13, to the full Kansas House of Representatives, they will be asking their colleagues to violate the Clean Water Act. Before taking such an action he urges the committee to get a Kansas Attorney General's opinion as to the many legal questions raised on the floor of the Kansas Senate and before this committee about the bill. (See attachment 10)

Laura Calwell, President, Friends of the Kaw, was welcomed to the committee. She testified in opposition to the bill and believes it upholds Kansas's long standing tradition of allowing property owners to do what ever they want to their property and the publicly owned water that passes over their property regardless of public interest or health. The polluted condition of the Kansas River, it's tributaries, and all other waters in the state are a result of both rural and urban abuse. To pass a bill that will allow any one in the state of Kansas particularly agricultural feed lots to treat the rivers and streams as sewers is wrong. (See attachment 11)

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Dwight F. Metzler, P.E., was welcomed to the committee. He testified in opposition to the bill and believes the committee should allow this bill and related bills to die. He believes KDHE has developed a process for doing this which is satisfactory to the EPA and that reclassifying the 6,000 stream segments on a scientific basis requires much effort. This work should be completed in five years. He asked the committee to consider the alternative if some version of this bill becomes law, it will violate federal law and EPA will set Kansas stream standards. (See attachment 12)

Edward Rowe, League of Women Voters of Kansas, was welcomed. He testified in opposition to the bill and believes water is an unusual resource in that it gets used over and over. Each of us has a duty to use water in a way that doesn't make it unhealthy or unusable for downstream users. His own city has an obligation to treat the sewage produced by it's citizens before returning the water back into the river. The operator of a feedlot likewise has an obligation to minimize the impact of his operation on downstream users. As helpful as voluntary, incentive based programs are, regulations and a regulatory agency are also needed. It's not fair for some to pay for pollution reduction while competitors are left free to cut corners. He believes this threatens to turn back the clock on water quality progress. (See attachment 13)

Mike Calwell, Kansas Canoe Association, was welcomed to the committee. He testified in opposition to the bill and believes this bill is against federal law, that it will backfire on Kansas and create the one thing that our agricultural community does not want, more federal control instead of less. That it is asking to open up our streams and rivers to increased levels of pollution, thus creating public health problems; to increase the cost of our water purification systems statewide; and to exempt the Ag Industries by allowing them to increase pollutants to streams while other industries must comply. (See attachment 14) Questions and discussion followed.

Written only testimony in opposition to the bill was submitted by John T. Barnes, Natural Resource Council (See attachment 15) and Ron Klataske, Executive Director, Audubon of Kansas. (See attachment 16)

The Chairperson reviewed the committee agenda for Tuesday, March 20, and thanked committee members and guests for their work and attention.

The meeting adjourned at 6:45 p.m. The next meeting is scheduled for Tuesday, March 20.