

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 A.M. on March 3, 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:

J. Michael Hayden, Kansas Department of Wildlife and Parks  
David Pope, Chief Engineer, Division of Water Resources  
Tracy Streeter, Director, Kansas Water Office

Others attending:

See attached list.

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. A memo from Amy Thornton, Assistant Legal Counsel, Kansas Department of Wildlife and Parks, regarding State Park No. 24 was distributed to the committee.

Continued testimony from J. Michael Hayden, Kansas Department of Wildlife and Parks, was presented on SB 228. He stated that while this legislation is well intentioned, it is not necessary. These issues can be negotiated with the Water Office.

Chairman McGinn recognized Tracy Streeter, Director of the Kansas Water Office (Attachment 1). Mr. Streeter stood in opposition to the bill stating that the State of Kansas is obligated under the Memorandum of Understanding with the federal government to operate Cedar Bluff Reservoir for particular purposes, and that a change to a water right cannot negatively impact other water right holders.

Senator Lee asked if the artificial recharge pool is not transferring. Mr. Streeter said it was not. Senator Lee further asked if this would change the City of Russell's water right, to which Mr. Streeter said it would not.

Senator Huelskamp asked what portion of the downstream water right holder is held by the government as opposed to private holdings. David Pope stated that most are privately owned. Senator Huelskamp then asked for an explanation as to the Attorney General's meetings, if they were announced or if not, why they were hidden. Mr. Streeter stated that the Technical Advisory Committee is not atypical of government business. The meetings were not secret, they just were not published in the Kansas Register. However, updates were provided. Senator Huelskamp followed this by asking if nongovernmental entities were invited. Mr. Streeter stated that they were not specifically invited. They try to get people who represent stakeholders.

Senator Taddiken asked about the agreement signed between Hays and Russell, as to which pool this addressed. Mr. Streeter stated it was the artificial recharge pool. Senator Taddiken asked about selling water rights. Mr. Streeter stated that in order to sell it, Cedar Bluffs would have to be put in a marketing program, which is the joint use pool.

Senator Ostmeyer asked if Geoff Withington was invited, to which Mr. Streeter stated that he was on the e-mail list. Senator Ostmeyer said that Mr. Withington seemed to be left out of the loop, and assurance that people in Trego county will be included was needed.

Senator Lee stated that she attended the meeting and Mr. Withington stated his appreciation of being involved in meetings and being invited since this is the biggest issue in this area. Senator Ostmeyer stated that Mr. Withington did make that remark, however, his frustration came later in the process.

## CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 A.M. on March 3, 2005 in Room 423-S of the Capitol.

The Chair recognized David Pope, Chief Engineer of the Division of Water Resources to present testimony (Attachment 2). Mr. Pope opposed the bill, stating that it sets a dangerous precedent. Passage of this bill would be detrimental to the Water Appropriations Act and would cause an unlawful taking of water rights.

Senator Ostmeyer asked how many acre-feet of water is lost through evaporation. Mr. Pope stated that 8 acre-feet per day are lost (4 cubic feet per second). Senator Ostmeyer also asked if waterholders called for more water, if this would then shut off. Mr. Pope said it depends on factual circumstances.

Senator Taddiken asked if Hays and Russell agreed to settle for less than total release of the artificial recharge pool. Mr. Pope stated that they have to speak for themselves in terms of what they are satisfied with, and they have not given up their right to seek enforcement of their water rights in the event that they are impaired. He understood the two-way agreement to state that the artificial recharge pool takes care of that part, but he did not think that they are in the position to ask for more water to be released. Senator Taddiken then asked if they would have legal standing to say that more water has to be released from the recharge pool. Mr. Pope stated that only to the extent that there is inflow to the lake that was being diverted junior to their rights, and they were simultaneously being impaired.

Chairman McGinn announced that the Friday meeting would begin at 8:45 a.m. due to the change in the Senate floor schedule.

Written testimony was submitted by LaVene R. Brenden, Chairman of the Kansas Society of Professional Engineers (Attachment 3).

Senator Lee asked if it makes any difference who has control of that water, whether it's the Water Office or Kansas Department of Wildlife and Parks unless the water law is changed. Mr. Pope stated that on recharge, he thought that was correct.

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