



**Southwest Kansas
Groundwater Management District No. 3**

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Testimony on Senate Bill 122

to

The House Ag & Natural Resources Committee

By

Mark E. Rude, Executive Director

Southwest Kansas Groundwater Management District No. 3

March 7, 2011

Chairman Powell 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

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.

House Ag & Natural Resources
March 7, 2011
Attachment 8

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KANSAS STATE BOARD OF AGRICULTURE
DIVISION OF WATER RESOURCES

DEC 22 1993

MEMORANDUM

Field Office
Division of Water Resources
Garden City

TO: John Gottschamer

DATE: December 22, 1993

FROM: Leo Rolfs

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;

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- 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.

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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:bx

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