

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 16, 2004 in Room 231-N of the Capitol.

All members were present except:

Representative Gary Hayzlett- excused

Committee staff present:

Raney Gilliland Legislative Research Department

Mary Torrence, Revisor of Statutes

Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Woody Moses, KS Aggregate Producers' Association, 800 SW Jackson, #1408, Topeka, KS 66612; Chris Wilson, KS Building Industries Association, 212 SW 8th Avenue, Suite 201, Topeka, KS 66603; Carl Nuzman, PE, Consulting Hydrologist, 3314 NW Huxman Rd., Topeka, KS 66539; Clint Patty, Frieden, Haynes & Forbes Law Firm, 555 S Kansas Avenue, Topeka, KS 66603; Jim Gregory, The Kansas Chamber, 835 SW Topeka Blvd. Topeka, KS 66612-1671; Nadine Stannard, Associated Material & Supply, PO Box 4476, Wichita, KS 67204-0476; Wess Galyon, Wichita Area Homebuilders Association, 730 N Main, Wichita, KS 67203; Dane Barclay, Alsop Sand Co., Inc., PO Box 331, Concordia, KS 66901; Gary Rainbolt, Larned Sand & Gravel, Inc., PO Box 227, E. Hwy 19, Larned, KS 67550; Dan Ward, KS Wildlife Federation, 214 SW 6th Avenue, Ste. 205, Topeka, KS 66603; Greg Foley, Assistant Secretary, KS Department of Agriculture, 109 SW 9th Street, Topeka, KS 66612-1280; Pat Lehman, Northwest KS Groundwater Management District #4, PO Box 3510, Lawrence, KS 66046; Charles Benjamin, KS Chapter of Sierra Club, PO Box 1642, Lawrence, KS 66044-8642; Gerald T. Blain, PE, Water & Sewer Department, 455 N Main, Wichita, KS 67202-1679

Others attending:

See Attached List.

Chairperson Joann Freeborn called the meeting to order. She announced that in today's committee meeting, due to the large number of conferees, she will be limiting the time for conferees to speak. She reviewed the committee agenda for next Thursday, March 18, possible action on **SB 396** - Creates the radiation control operations fee fund and **SB 416** - Allows cities and counties to use certain moneys for programs dealing with recyclables. She opened the hearing on **HB 2919**.

HB2919: **Concerning the beneficial use of groundwater.**

Raney Gilliland, Legislative Research Department, explained the bill.

The Chairperson welcomed the first proponent to the committee.

Woody Moses, Kansas Aggregate Producers Association, testified in support of the bill and believes the purpose of this bill is to ask for a policy decision. This bill provides the Legislature the means to make such a determination with respect to the mining of sand and gravel and its relationship to other water uses in this state. As the Sand and Gravel industry was not regulated until 1993 most of the areas the industry operates in were already closed or restricted for available water, making it almost impossible to secure water. (See attachment 1)

Chris Wilson, Kansas Building Industry Association, testified in support of the bill. This bill is needed to

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address the current situation with the sand and gravel industry in Kansas. Kansas builders rely on having an adequate supply of raw materials so that homebuilding may continue. The homebuilding industry has been a bright spot in the economy, helping to lead the way out of the recent recession. In order to continue to have a strong homebuilding industry in Kansas, these raw materials are essentials. Areas that do not have sand and gravel available do not have significant development occurring. (See attachment 2)

Carl Nuzman, Consulting Engineer/Hydrologist, presented testimony in support of the bill. Many areas of the state are now closed to the new appropriation of water. It is essential that the aggregate producers be able to continue to operate in all areas of the state. It is difficult to find good deposits of sand and gravel that are economical to mine and have the gradation of grain sizes to meet the specifications for concrete, asphalt, well gravel filter pack material, and other uses. The resulting sand pits are not detrimental to our water supply. The removal of sand and gravel increases the storage yield of an aquifer. (See attachment 3)

Clinton Patty, Attorney with the law firm of Frieden, Haynes and Forbes, testified in support of the bill and represented the Kansas Aggregate Producers Association. He presented testimony regarding the proper interpretation of the phrase "substantially adverse impact" as it appears in KSA 82a-734 and why the proposed definitions in this bill are appropriate as a matter of law. (See attachment 4)

Jim Gregory, The Kansas Chamber of Commerce, testified in support of the bill and believes for many years our state's natural resources have fueled the Kansas economic engine and kept our commercial centers and agriculture competitive. In order to build on this strength it is important to have a stable and predictable source of building materials. They believe this bill will improve the stability of the state's sand and gravel industry, while at the same time provide a framework for the proper management of our state's water resources. (See attachment 5)

Nadine Stannard, President of Associated Material and Supply Company, Inc., testified in support of the bill and believes it helps create a fair, user-friendly business environment in Kansas, because it supplies a certain and uniform standard which reasonably protects groundwater, but does not arbitrarily hinder the business of sand and gravel plant operators. Indeed Kansas would benefit further by allowing business to export more sand outside Kansas. She is afraid to develop those markets because when she runs out of reserves she doesn't know where she will go. Her business will close. (See attachment 6)

Wess Galyon, President/CEO of the Wichita Area Builders Association, presented testimony in support of the bill and believes the construction industry needs an ongoing supply of readily available sand and gravel, which is used in numerous applications and products during the various phases of construction of homes, commercial and industrial buildings, and construction of infrastructure. As far as they have been able to ascertain, there is no scientific evidence that evaporation from the surface of active or retired sand and gravel pits has impaired anyone's legitimate water rights. (See attachment 7)

Dane Barclay, President of Alsop Sand Company, Inc., testified in support of the bill. Alsop Sand Company is a third generation business. Their individual locations are representative of small sand producers across Kansas. Because of tremendous expenditures, for land, equipment and start up cost these are long-term commitments of twenty to fifty plus years. He believes they need legislation and regulations that recognize the long-term nature of the industry and supports this bill as a way to address the issue. (See attachment 8)

Gary Rainbolt, Larned Sand and Gravel, Inc., presented testimony in support of the bill. They applied for their permits with the Department of Water Resources in 2001. They waited approximately two years to receive their permits for their new ground. Now the DWR wants them to have water exposed by December 31, 2004. Originally they had 5 years to accomplish this. This means they will have to turn down work so they can concentrate their efforts to get this new pit open. This will hurt them financially by concentrating on this instead of spreading it out by working on it when between jobs. (See attachment 9)

Written only testimony in support of the bill was submitted by M.S. Mitchell, a consulting engineer and Legislative Chair of the Kansas Building Industry Association. He believes this provides statutory

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definition of the term “substantial adverse impact” as used in KSA 82a-734 to mean that anyone questioning the effect of the exposed groundwater resulting from sand and gravel mining on an existing water right must be able to prove that effect. ([See attachment 10](#))

Written only testimony in support of the bill was submitted by Joe Tarbet, Vice President of Tarbet, Inc., Ulysses, Kansas. The passage of this bill is essential in order to provide some type of resolution regarding how the Kansas Water Appropriations Act is applied to sand and gravel operations. Recently they were unable to quote at any price a proposed 43 mile Hamilton County road project. ([See attachment 11](#))

Written only testimony in support of the bill was submitted by Lance Latham, Director of Communications and Public Affairs for Ash Grove Cement Company, and believes this bill would provide a means of implementing a workable policy with respect to sand and gravel operations, and their interaction with the aquifer. ([See attachment 12](#))

Written only testimony in support of the bill was submitted by Victor Klotz, Klotz Sand Company, Inc. His company is unable to achieve suitable and stable financing from their bankers and other investors who are unwilling to extend capital to a business that has no assurance that they will be allowed to continue past one to five years. ([See attachment 13](#))

Written only testimony in support of the bill was submitted by Richard Boeckman, Keenan and Boeckman Attorneys at Law, Great Bend, Kansas. He believes KSA 82a-734 as it is presently written contains a definition of “substantially adverse impact on the area.” As a practicing attorney he finds that definition to be vague. It is his opinion it would be helpful to practitioners to have a more clear definition of the term “substantially adverse impact on the area.” ([See attachment 14](#))

Written only testimony in support of the bill was submitted by Ken Johnson, Vice President, APAC Shears, Hays, Kansas. He believes if water is truly reserved for the benefit of the people in this state then surely the public benefits by having reasonable access to a supply of sand and gravel which is used in many ways from eyeglasses to highways, from insulation to the silica used in computer chips. Next to water, ubiquitous sand and gravel is one of our most needed basic materials in our society. ([See attachment 15](#))

Written only testimony in support of the bill was submitted by Ron Cornejo, Cornejo & Sons, Inc., a large street and highway construction company. Sand and aggregate materials are a necessary component to the production of asphalt and concrete materials. The local production of sand and aggregate materials is critical to maintaining an adequate supply of quality products for construction projects, particularly street and highway construction. ([See attachment 16](#))

Committee questions and discussion followed.

Chairperson Freeborn thanked the proponents for their interest and participation and welcomed the first opponent to **HB 2919** to the committee.

Dan Ward, Executive Director of the Kansas Wildlife Federation, presented testimony in opposition to the bill. He believes whether the issue is wetland areas, stream flow, water quality, waterfowl hunting, drinking water supplies, or fishing and other water recreation, groundwater use is a theme that is quite literally an underlying problem. In order to be successful at stabilizing water use and then restoring our aquifers, the Division of Water Resources needs the help of the Legislature. The key problem is that aquifers are oversubscribed, and this body needs to weigh in with ways to diminish water use before the wells run dry. ([See attachment 17](#))

Greg Foley, Assistant Secretary of the Kansas Department of Agriculture, was welcomed to the committee. He testified in opposition to the bill and believes this bill would amend KSA 82a-734 to essentially remove sand and gravel operations from regulation of water consumption under the Kansas Water Appropriation Act. This is accomplished by defining terms in a way that ensures that evaporation from these operations is considered neither a beneficial use nor a diversion of water. This bill ignores the indirect, but not insignificant, effect sand and gravel operations can have on groundwater and other water

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users. According to current law, if there is no substantial adverse impact to the area groundwater supply, then evaporation from a sand and gravel operation is not a beneficial use. Consequently, under this bill, no permit or water right would be needed for most sand and gravel operations. (See attachment 18)

Pat Lehman, testified in opposition to the bill, on behalf of the Northwest Kansas Groundwater Management District #4. They believe this bill amends KSA 82a-734 by defining “direct impairment” and “substantial adverse impact on the area”, and stating that evaporation from exposed sand and gravel pits, if deemed a beneficial use, shall be non-consumptive. KSA 82a-734 currently says that the evaporative losses from sand and gravel operations is not a beneficial use of water (requiring a water right) unless the operation has a substantial adverse impact on the area. (See attachment 19)

Charles Benjamin, Kansas Chapter of the Sierra Club, testified in opposition to the bill. One of the concerns of Kansas Sierrans is the sustainability of water use from aquifers in Kansas and the potential for pollution to those aquifers. This bill is of concern to Kansas Sierra Club because it would make it the policy of the state of Kansas to no longer regulate evaporation from aggregate pits as a diversion of water from aquifers. (See attachment 20)

Gerald Blain, Water Supply Projects Administrator, Water and Sewer Department, City of Wichita, testified in opposition to the bill. He stated that the City of Wichita is very concerned about several issues that are included in this bill. It appears that the general intent of the bill is to treat water usage from sand and gravel pits separately from any other water users. The most troubling portion of the proposed bill is item 2 (d), which contends that even though water is lost from a sand or gravel pit through evaporation, it will still be considered “non-consumptive”. The existing water appropriations act, and the regulations used by the Department of Agriculture, Division of Water Resources, provides a comprehensive set of standards that is used to manage the State’s water supplies. Water lost through evaporation from a sand or gravel pit has been, and must be, considered water usage. (See attachment 21)

Written only testimony in opposition to the bill was submitted by Michael Dealy, Manager, Equus Beds Groundwater Management District #2. The bill seeks to exempt sand and gravel pit operations from obtaining a water permit to divert surface or groundwater by exposing the water body to evaporation during mining operations. Aggregate mining is an environmentally intrusive process that removes millions of cubic yards of sand and gravel overlying the Equus Beds aquifer, exposing the shallow aquifer to the evaporative process. (See attachment 22)

Committee questions and discussion followed.

Chairperson Freeborn thanked the conferees for their participation and the committee for their attention. She closed the hearing on **HB2919**.

The meeting adjourned at 5:40 p.m. The next meeting is scheduled for Thursday, March 18, 2004.