

MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Vice-Chairman Dan Kerschen at 9:00 a.m. on March 3, 2011, in Room 783 in the Docking State Office Building.

All members were present except:

Representative Dan Collins - Excused
Representative Rocky Fund - Excused
Representative Michael Peterson - Excused
Representative Larry Powell - Excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Kay Scarlett, Committee Assistant

Conferees appearing before the Committee:

Susan Metzger, Manager-Watershed Coordination Unit, Kansas Water Office
Herb Graves, Executive Director, State Association of Kansas Watersheds
Duane Hund, Contracting Officer, Mill Creek Watershed District No. 85 (written only)

Others attending:

See attached list.

Representative Hayzlett moved to approve the minutes of February 14, 15, 16, 17, 18, and 21. Seconded by Representative Arpke, the motion carried.

Hearing on HR 6009 – A resolution to change the language of conservation easement assignments from “perpetuity” to “life of the project.”

Vice-Chairman Kerschen opened the hearing on **HR 6009**. Sean Ostrow, Office of the Revisor of Statutes, explained the resolution urging the U.S. Army Corps of Engineers to accept conservation easement language for the “life of the project” and not for “perpetuity.”

Susan Metzger, Manager-Watershed Coordination Unit, Kansas Water Office, appeared in support of **HR 6009**. The Kansas Water Office feels that the alternative language proposed in this Resolution will increase landowner participation in mitigation activities while still meeting the goals of the Final Rule regarding *Compensatory Mitigation for Losses of Aquatic Resources* published in the April 10, 2008, Federal Register. She explained that compensatory mitigation requirements are triggered when an applicant proposes to discharge, dredge, or fill a wetland, stream, or other water of the United States through a Clean Water Act Section 404 permit.

While not covered in this Resolution, she shared other challenges the Kansas Water Office face with mitigation in the state. In 2008, the Kansas City District of the U.S. Army Corps of Engineers adopted stream mitigation guidelines for activities such as filling, impounding, or armoring a stream. In the first two years of implementation of the guidelines, they are learning of the impact they are having on some construction and water resource projects. Specifically, concerns have been expressed by watershed districts that their projects are at a disadvantage compared to many other projects due to the length of stream that is typically impacted. Because a large factor in determining mitigation debits is based on stream length impacted, mitigation costs can approach, and sometimes exceed, the cost of the project itself. The Kansas Water Office is working with state and federal natural resource agencies to address these concerns. (Attachment1)

Herb Graves, Executive Director, State Association of Kansas Watersheds, testified in support of **HR 6009** explaining that a Clean Water Act Section 404 permit must be issued by the U.S. Army Corps of Engineers before any watershed dam is constructed. The proven way to protect these mitigation measures is to enter into agreements with landowners through conservation easements. The State Association of Kansas Watersheds, the watershed districts of Kansas, and most importantly the landowners of Kansas feel “the life of the project” is a more understandable and acceptable term for the easement than “perpetuity.” It is their hope that with the approval of **HR 6009**, the U. S. Army Corps of Engineers will adopt the new language. (Attachment 2)

CONTINUATION SHEET

The minutes of the House Agriculture & Natural Resources Committee at 9:00 a.m. on March 3, 2011, in Room 783 of the Docking State Office Building.

Duane Hund, Contracting Officer, Mill Creek Watershed District No. 85, submitted written testimony in support of **HR 6009**. He expressed concern that federal Clean Water Act Section 404 permit requirements are not imposed uniformly among the states. (Attachment 3)

As there were no other conferees, Vice-Chairman Kerschen closed the hearing on **HR 6009**.

Subcommittee Update on HB 2272 – Exempting certain minor construction projects from state and federal water regulations.

Subcommittee Chairman Representative Kerschen distributed copies of a proposed alternative to **HB 2272** submitted by David Barfield, Chief Engineer, Kansas Department of Agriculture, Division of Water Resources. Mr Barfield believes this alternative approach would make it unnecessary to define stream obstruction in statute and is straightforward enough to make the permit determination process previously drafted unnecessary. The Department still plans to move forward in rules and regulations with a simpler permitting process for minor projects which would require permitting. (Attachment 4)

The meeting adjourned at 9:25 a.m. The next meeting of the House Agriculture & Natural Resources Committee is scheduled for March 7, 2011.