Approved: 03/23/2010
Date

# MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairwoman Carolyn McGinn at 8:00 a.m. on March 11, 2010, in Room 144-S of the Capitol.

3/11

All members were present.

Committee staff present:
Kristen Kellems, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Stanley Rasmussen, U.S. Army, Senate Fellow
Grace Greene, Committee Assistant

Conferees appearing before the Committee:
Ed Peterson, Mid-America Regional Council, Air Quality Forum
Karl Brooks, Regional Administrator, U.S. Environmental Protection Agency (EPA), Region VII
Brandy Carter, Kansas Cattleman's Association
Senator Tim Huelskamp
Edward Cross, Kansas Oil and Gas Association
Galen Menard, National Cooperative Refinery Association
Leslie Kaufman, Kansas Cooperative Council, Kansas Grain and Feed Association, & Kansas Agri-business Retailers Association

Others attending:
See attached list.

The Committee continued the hearing on **SB 553 - Recovering migrating natural gas.**

Senator Abrams discussed the time line for **SB 553** and stated he was in favor of allowing more time to analyze the issue; such as in an interim committee. Senator McGinn stated that may be an option; however, since the stakeholders were available today for questions, the Committee would continue with questions.

Mark Hewett, Doug Louis, Randal Brush, Senior Vice President, William M. Cobbs and Associates (Attachment 1), Jerry Morris, Ron Gaches, and Gordon Stull took questions from the Committee.

Chairwoman McGinn began the hearing on **SCR 1623 - Urging the Congress to exempt the Flint Hills tallgrass prairie from any United States EPA smoke management plan.**

Ed Peterson, Mid-America Regional Council, Air Quality Forum (Attachment 2) addressed the Committee concerning the resolution. Mr. Peterson provided information on what the Air Quality Forum has done to address air quality issues in the Kansas City region. Mr. Peterson stated the Flint Hills burning is significant for two reasons: the smoke is transported and there is no control over it and that it is transported in the months of April and May, which are not peak months for the region, thus creating additional unhealthy days for Kansas residents downwind from the burns. Mr. Peterson stated that they support continued conversations between stakeholders to address this issue.

Karl Brooks, Regional Administrator, U.S. Environmental Protection Agency (EPA), Region VII (Attachment 3) addressed the Committee on managing the ozone problem. Mr. Brooks discussed the challenges of addressing the ozone issue, while preserving the pastures and ecosystems, addressing public health issues, and maintaining compliance of ozone laws. Mr. Brooks stated that clean air regulations also have benefits to the State, such as in health benefits and that the urban and rural communities throughout the State need to work together to address the ozone issues.

Dr. Clinton Owensby took questions from the Committee.

Chairwoman McGinn began the hearing on **SR 1809 - Opposing the United States Environmental Protection Agency's greenhouse gas regulation by rulemaking**.

Minutes of the Senate Natural Resources Committee at 8:00 a.m. on March 11, 2010, in Room 144-S of the Capitol.

Senator Tim Huelskamp (Attachment 4) commented on the decision to declare green house gas (GHG) a toxic pollutant for the following reasons: if the ruling is implemented it will have a devastating impact on the State of Kansas' agriculture, oil and gas and manufacturing industries and that the best way to address the issues is through the legislative process to ensure the input from the American people; not through a massive regulatory scheme through a bureaucratic process.

Edward Cross, Kansas Independent Oil and Gas Association (Attachment 5) addressed the Committee as a proponent of the resolution. Mr. Cross discussed broad policy implications of using the Clean Air Act to regulate GHG emissions.

Galen Menard, National Cooperative Refinery Association (Attachment 6) addressed the Committee as a proponent of the resolution from his experience operating a petroleum refinery, a farmer-owned cooperative. Mr. Menard stated that the issue is a concern to the petroleum refining business and many other forms of businesses in Kansas.

Leslie Kaufman, Kansas Cooperative Council, Kansas Grain and Feed Association, & Kansas Agri-business Retailers Association (Attachment 7) addressed the Committee as a proponent of the resolution. Ms. Kaufman stated that the Clean Air Act was not created to regulate GHG.

Written testimony included:
Brandy Carter, Kansas Cattleman's Association (Attachment 8)
Congressman Jerry Moran, U.S. House of Representatives (Attachment 9)
Kent Eckles, Kansas Chamber of Commerce (Attachment 10)
Kansas Electric Cooperatives Inc., Sunflower Electric, & Kansas Electric, (Attachment 11)
U.S. Representative Lynn Jenkins (Attachment 12)
U.S. Representative Todd Tiahrt (Attachment 13)
Chris Wilson, American Agri-women, Kansas Building Industry Association (Attachment 14)
Tim Stroda, President-CEO, Kansas Pork Association (Attachment 15)
Allie Devine, Vice President and General Counsel (Attachment 16)
Brad Harrelson, State Policy Director, Kansas Farm Bureau (Attachment 17)

The next meeting is scheduled for March 12, 2010.

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

## SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

3-11-2010

| Name | Representing |
|---|---|
| Diane Smith | self |
| Cindy Kemper | Johnson County Envtl Dept |
| Tom Gross | KDHE |
| [illegible] | self |
| KARL BROOKS | USEPA REG 7 |
| Teresa Janes | Southern Star |
| Becky Wells | EPA |
| Terry Morris | Southern Star |
| Robert Bahnick | Southern Star Central Gas |
| PHIL WAGGONER | KGPCo |
| Ron Gaches | Southern Star, Atmos, El Paso |
| Travis Love | Little Gov't Relations |
| CLARE GUSTIN | Sunflower Electric Power |
| Ruth Mezger Urban | Haysville Surface & Min. Assoc. |
| John W. Mitchell | KDHE |
| Amanda Graor | Mid-America Regional Council |
| Leslie Kaufman | Ks Co-op Council |
| TOM DAY | KCC |
| LARRY BERG | MIDWEST ENERGY |
| | |

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## SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

3-11-2010

| Name | Representing |
|---|---|
| Shari Albrecht | KDHE |
| Mick Urban | Kansas Gas Service |
| [redacted] Bill Brady | Northern Nat'l Gas. |
| Brad Harrelson | KFB |
| Leigh Keck | HLF |
| John Donley | KS Lvst. Assn. |
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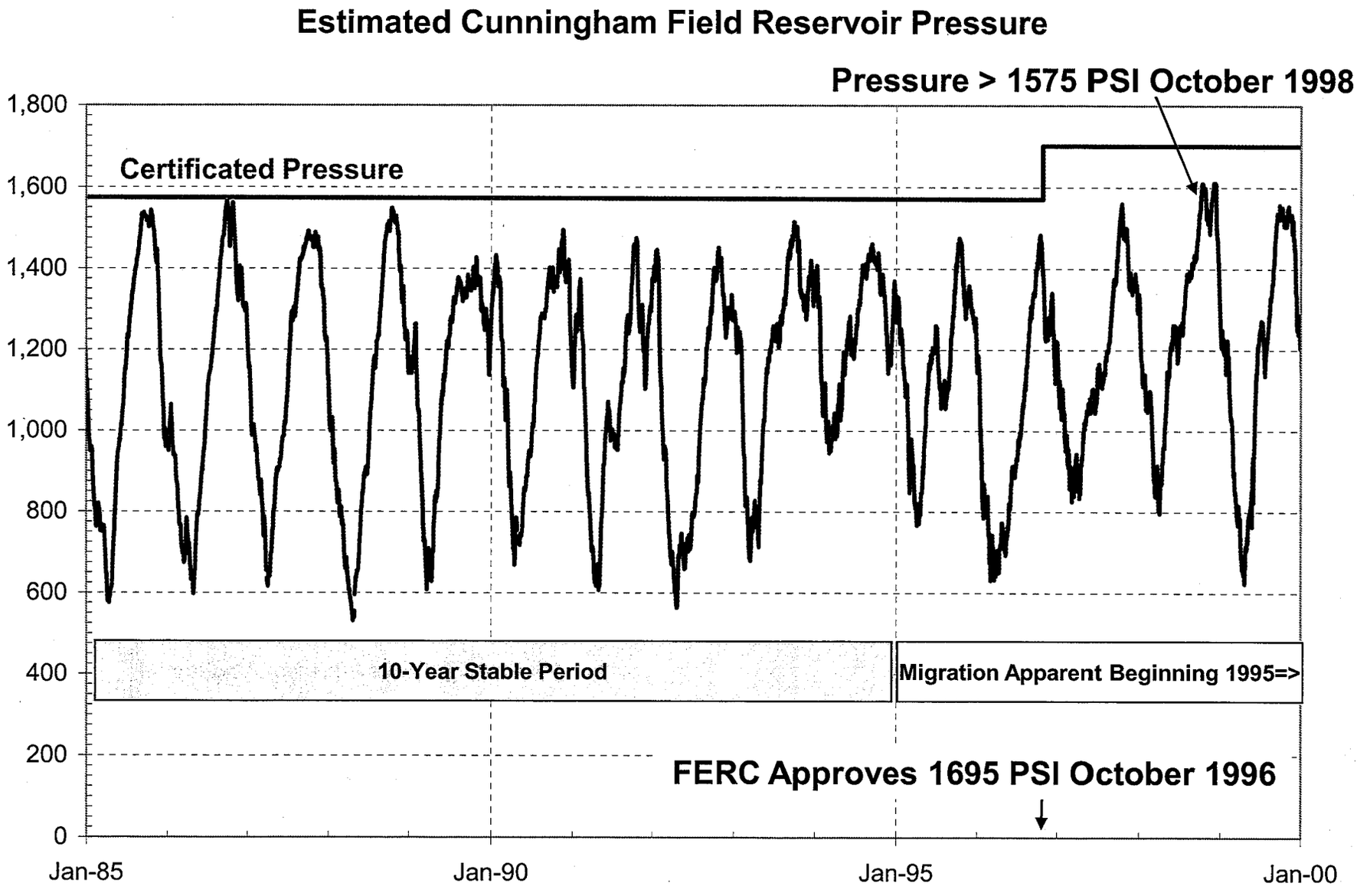
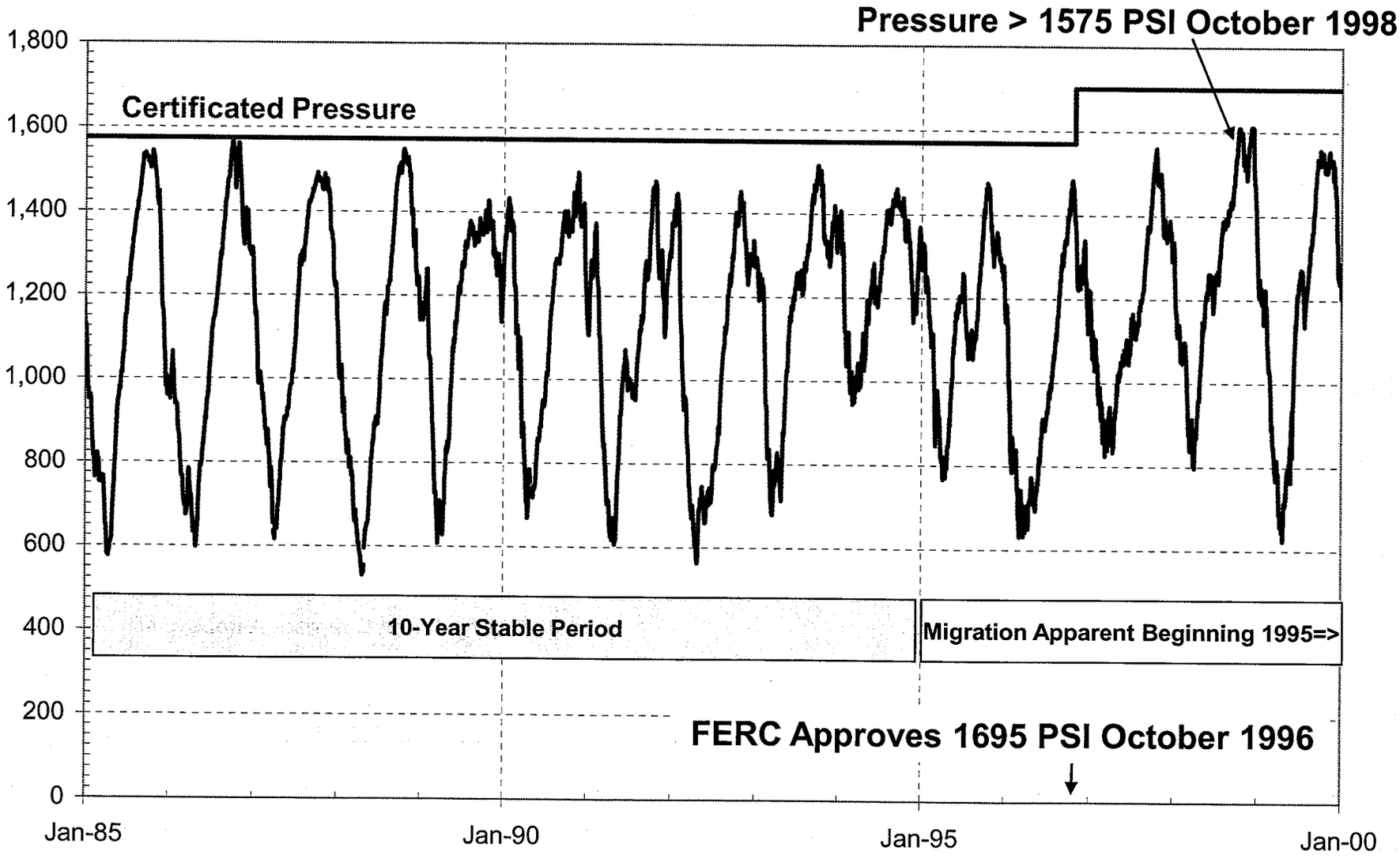
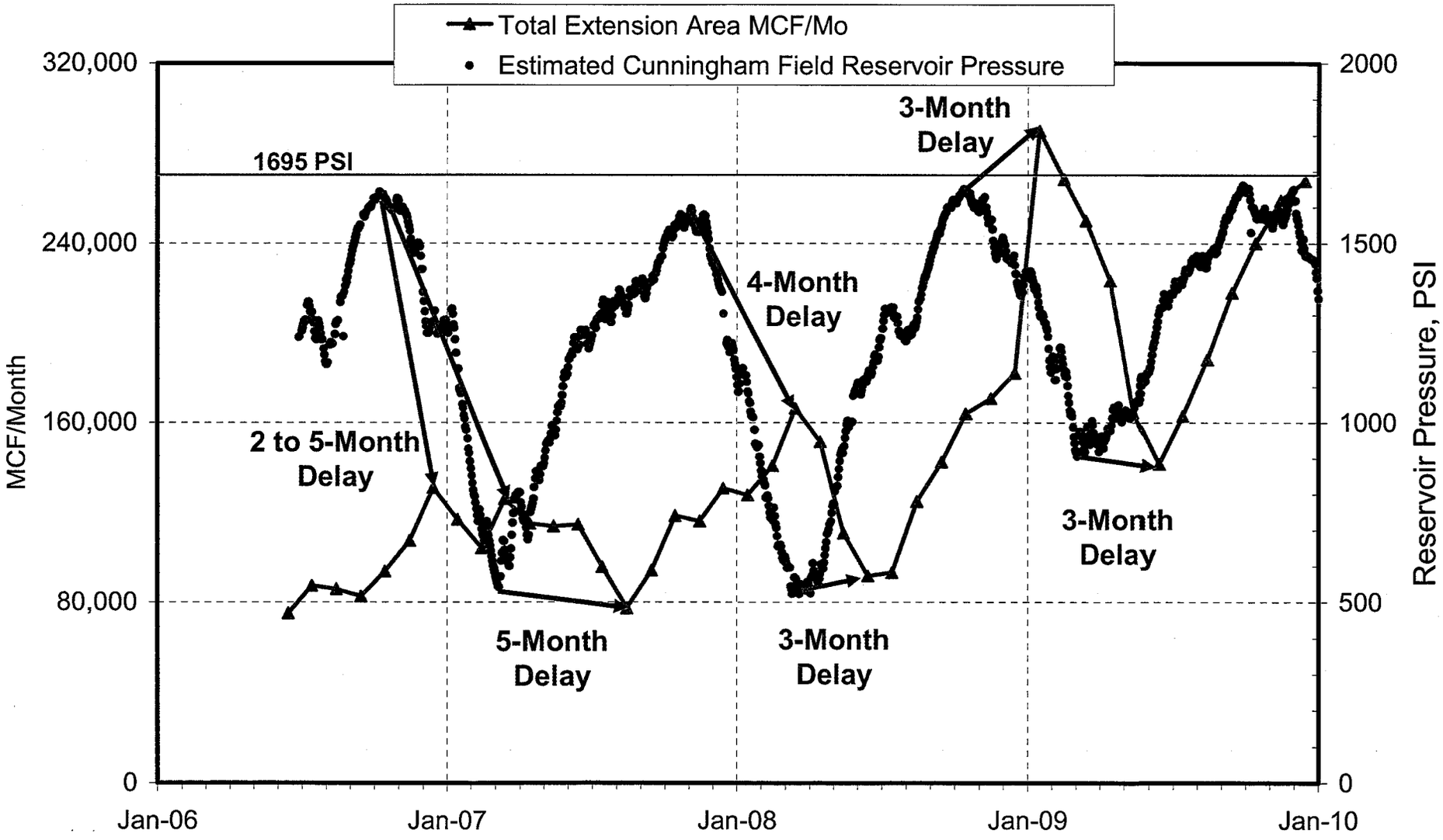


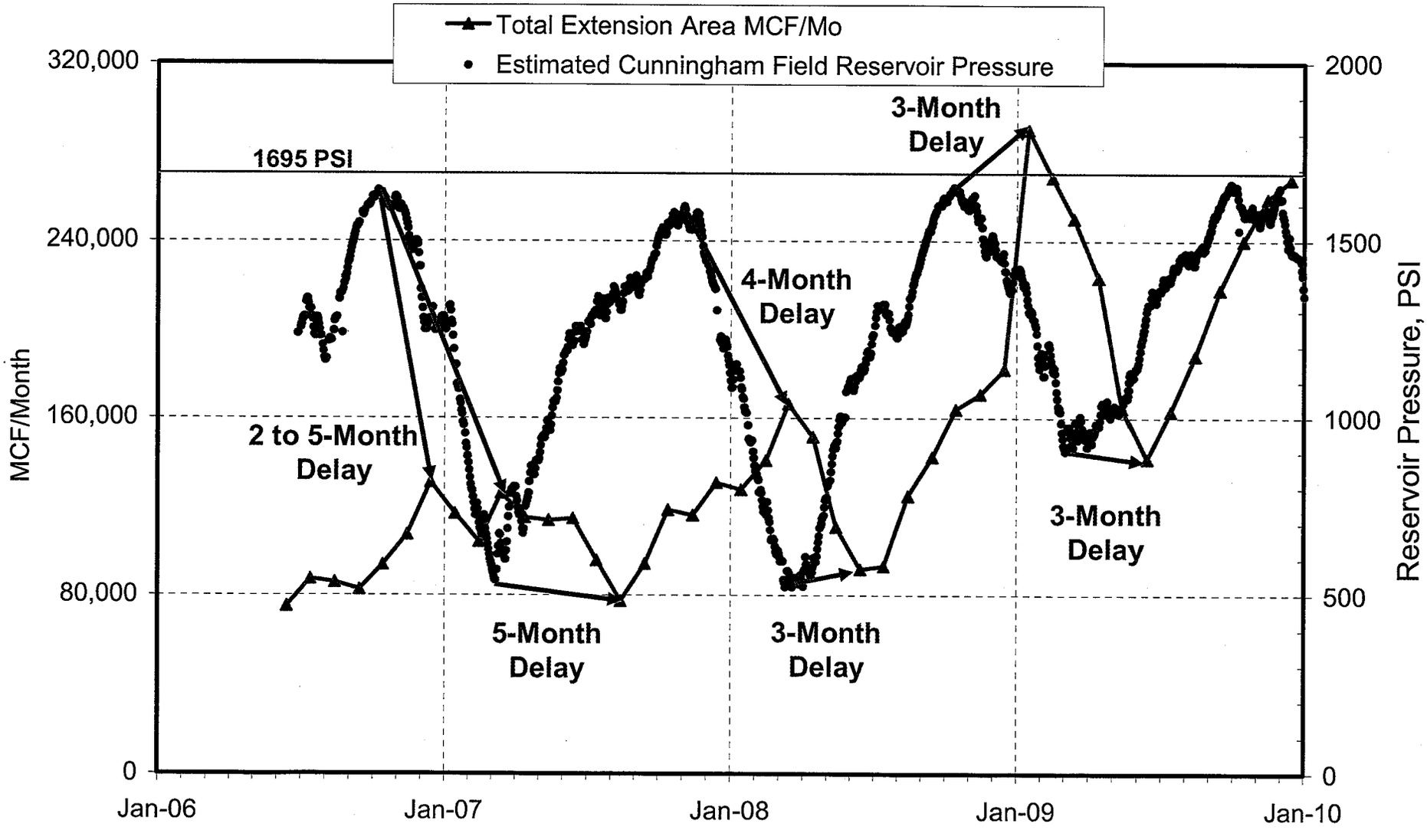
## Estimated Cunningham Field Reservoir Pressure



# Total Extension Area Production, Cunningham Field Reservoir Pressures



# Total Extension Area Production, Cunningham Field Reservoir Pressures



**TESTIMONY**
**Ed Peterson, Kansas Co-Chair**
**Air Quality Forum, Mid-America Regional Council**
**Senate Natural Resources Committee, 3.11.10**

On behalf of the Air Quality Forum at the Mid-America Regional Council in Kansas City, I respectfully submit the following testimony. My name is Ed Peterson, and I am the Kansas Co-Chair of this regional committee and a Johnson County Commissioner. The Air Quality Forum was created in accordance with Section 174 of the Clean Air Act to coordinate the development and implementation of air quality policy in the bi-state Kansas City region. The Forum develops and recommends action plans to meet air quality requirements, and once those plans are approved, works with state and local officials on implementation.

The Kansas City region has faced the challenge of meeting federal ozone standards for decades, and the most recent revision by the EPA to the ozone standard is expected to put Kansas City back into nonattainment. As the National Ambient Air Quality Standards are health-based standards, this is an indication that the residents of Kansas City are breathing unhealthy air. It is worth noting that ground level ozone in the Kansas City area comes from three roughly equal sources: naturally occurring, transported from other areas and locally produced. The Flint Hills burns contribute as a transported source to Kansas City ozone levels every year during a time when levels tend to be low, creating additional unhealthy days for Kansas residents downwind from the burns.

It is also worth noting that the Kansas City region has borne the cost of emission controls and new technology for many years. While BPU and KCP&L have spent over $100million on emission control technologies during that time frame, it does not only affect large industry. Printers, bakers, dry cleaners and many other small businesses are also affected by rules that regulate their emissions and will likely need to become more stringent in the coming years, requiring additional monetary burdens on each and every proprietor. The individual consumer is also affected – the additional cost of low Reid Vapor Pressure fuel is felt at every visit to a gas pump, and the anticipated consumer cost of implementing an Inspection and Maintenance program in Kansas City alone surpasses $20million based on similar programs in other areas.

The Air Quality Forum believes the solution resides in a cooperative effort. By working together to create a smoke management plan, the health-based impacts of the burns can be minimized, having a positive impact on both the physical and economic health of Kansans.

The Air Quality Forum understands the importance of the prescribed burning to the continued vitality of the prairie lands. However, as a downwind area, the Forum would like to underscore the importance of a coordinated smoke management plan in order to minimize impacts to downwind communities. We have been and continue to be supportive of the work being done by KDHE, EPA Region 7 and the agricultural community to work toward a viable solution that benefits both the urban and rural areas of Kansas, as a non-attainment designation for any area of the state does not benefit either. It is truly in the best interest of all parties affected to remain active and involved in the smoke management plan development process, thereby ensuring that all interests are heard and the resulting plan works for everyone.

The Air Quality Forum remains supportive of the smoke management plan work being done in the state of Kansas to ensure healthy citizens and a healthy economy going forward. We appreciate the opportunity to comment on these proceedings.

Karl Brooks
EPA

**KANSAS SENATE NATURAL RESOURCES COMMITTEE TESTIMONY**

"SEEING THROUGH THE SMOKE: NATIONAL OZONE LAW, KANSAS SOLUTIONS"

The issue this committee is helping to define, publicize, and solve this spring is not so much smoke that streams off the Flint Hills when landowners burn their pastures, but the resulting air pollutants that foul the air most Kansans breathe. This spring this committee has a great opportunity to advance public understanding and media awareness about ozone, a chemical compound that damages our lungs, hearts, and health and one of the most notable of the pollutants created by these burns.

My testimony will focus on what EPA is doing to work with Kansans on the ozone problem. Because I work for the United States government, and the laws EPA must enforce are national laws, my perspective reflects my agency's duty to the laws enacted by Congress and interpreted by the courts of the United States.

But because solving the ozone problem has important state and local components, I am very glad to be here testifying before this legislative committee, pleased to be following the KDHE Director's testimony from last week, and appreciative of the testimony you will soon hear from the Mid-American Regional Council's air-quality forum chair, Johnson County Commissioner Ed Peterson.

I appreciate this opportunity because EPA has some useful information to contribute. I have had the pleasure – and the honor – to sit where you sit, and frankly kind of miss the chance to help inform state legislative work. You see, I represented 35,000 of my neighbors for six years as a state legislator in Idaho, the state where I was born, and considered my committee work as a state senator to be one of the finest forms of public education as well as lawmaking ever invented.

So I appreciate the challenges you face, and commend you for tackling the tough problem of ozone in Kansas. The testimony I offer is in the spirit of constructive engagement with a tough public-policy problem, which is the attitude I bring to all of Region 7's work while I am responsible for the agency here in the heartland.

Our actions help create ozone in the air we breathe. And your actions here, in handling the controversy generated by the concern to balance the management of tall grass prairies and the health impacts of prairie burning, can enlist both rural and urban citizens in a common cause: managing our actions, on rural ranches and on suburban freeways, to keep improving our air quality by attaining the national goals for clean air established by Congress.

The problem with ozone is that all of our actions in Kansas contribute to its formation and intensification: none of us can ignore our responsibility and all of us have to work together

The role of EPA is to focus Kansans' attention on both the causes of ozone pollution and the options we have to manage both the pollutant and our actions that help create it.

The challenge EPA and Congress created is to fit our actions within tougher new limits that especially affect the state's two biggest metropolitan areas, Wichita and Kansas City but could also be affecting the smaller agricultural communities within the Flint Hills.

The urgency of meeting this challenge comes from EPA's duty to evaluate the current science and to ensure that our public health standards remain protective as the science surrounding air quality and public health advances. When the peer-reviewed science suggests that more stringent standards are required, areas failing to meet these standards are typically expanded and the number of sources asked to do their part in protecting public health increases.

The costs of this wider, more intensive regulatory focus will be borne by Kansans in both urban and rural areas, but the reward for sharing these costs is measured in lives saved and brightened, as well as investment and growth opportunities preserved and enhanced. The Office of Management and Budget estimates that standards and regulations implemented under the Clean Air Act are some of the most cost-effective regulations in government. In fact, over the 10 year period from 1996 through 2006, OMB estimated a nominal cost ratio of approximately $10 dollars of health benefits realized for every $1 dollar spent on implementation and compliance.

We all need to recognize and acknowledge that if a source contributes to the problem then the source needs to be part of the solution to address the problem. And it is clear that the Flint Hills burning contributes to higher ozone values, so we can't ignore monitoring data. The public will still bear the health impacts, and isn't that what this discussion is really about?

The progress to date in meeting the ozone challenge reassures me that Kansans in both rural and urban areas recognize their shared stake in meeting the ozone goals.

As the Kansas Farm Bureau regularly reminds all of us who hear their public service announcements on the radio, "Good neighbors work together because our producers in rural areas depend on customers in urban areas."

I listened to your Senate Majority Leader on Friday tell an audience in Kansas City that his constituents in southeast Kansas understood all too well that agriculture is an enterprise that enlists both rural and urban people.

Senator Schmidt also reminded this audience of agri-business leaders that the intertwined problem of ozone control and pasture burning faced what he called an "understanding deficit."

Fortunately, this committee's work on the resolution about ozone and the Flint Hills offers a chance to begin filling in that deficit of understanding, and that's the task EPA in coordination with KDHE has set itself since last winter, when our air-quality staff began meeting with ranchers and range managers to line out what we knew about ozone, what we projected about ozone non-attainment, and what steps could be taken – by both urban and rural Kansans – to focus on the real challenge ahead of us: holding the line on the areas of ozone non-attainment, while reducing the intensity of our activities – in both urban and rural areas – that helped create this atmospheric pollutant that hurts all of us.

I have only been on the job as EPA's Regional Administrator in KC since February, and much good work was done before I got here. But there are five principles that I suggest should activate work being done by all the interested parties that have testified before your committee so far and are working together outside the Statehouse on the problem of ozone and pasture-burning.

First, as all reputable agricultural producer groups insist: the best decisions about food and our environment are made in a climate of scientific inquiry, public engagement, and mutual cooperation. For a problem as challenging as ozone control, all of us have to check our prejudices at the door and look to the facts and to the future.

Second, as the Kansas City Agricultural Business Council motto declares: farm must meet fork in handling common problems that remind us we live in a state that thrives on agricultural production but numbers a population predominantly urban. Interestingly, current science indicates that urban industry, suburban transportation and rural agriculture activities play a substantial role in the quality of air that all Kansans breathe. Specifically, it is estimated that the Flint Hills burns create ozone forming pollution equivalent to roughly 30% of the total Kansas City metropolitan area ozone season emissions and they do this in a fraction of the time. These burns produce more than 5 times the annual ozone forming emissions of a large, local power plant.

Third, as the Prescribed Fire Council's members have stressed at the informal work groups that began last winter: pasture burning is a management tool, not a recreational pastime. Land managers, informed by the best work done by our range and atmospheric scientists, should always strive to wield that tool of burning in a way that both improves the land and respects their neighbors' rights. When this can be done at a state or local level, it often alleviates the need for formal federal intervention. Creating an effective smoke management program that provides coordination, notification, mitigation and education is the way to accomplish this purpose.

Fourth, since it's only about a month before the spring burning cycle begins again, and many months before Congress could realistically begin to hold hearings on the subject of this resolution, Kansans have a great opportunity to continue and even accelerate the stakeholder sessions convened to assess past burning practices against future regulatory challenges.

Finally, EPA in Region 7 recognizes our agency's responsibility to share with all interested Kansans the science, technology, and law that shapes our legal responsibility to help this state and its citizens care for our air. Our air-quality and legal staff have been, and will continue to be, actively involved with ranch-owners, stock-raisers, local and state governments, and the nearly 2 million Kansans whose economic livelihoods and family health depend on the way we reconcile national air-quality goals and duties with private economic prosperity and responsibility.

I am delighted to acknowledge the active, constructive work by KDHE's John Mitchell throughout this process.

I am especially pleased that you will soon hear from the Greater Kansas City area's public-health and air-quality team at MARC.

What you do here on this resolution won't soon cause new statutes to emerge from Congress: the Framers made lawmaking hard on purpose, and we seem to have improved on their model in the past few years. But your work this winter and spring will contribute to a climate of constructive engagement, responsible policymaking, and mutually respectful cooperation.

I often listen to Kansas Public Radio, which broadcasts from my own home campus on Mt Oread. And I'm always struck by the simple truth at the heart of the Kansas Farm Bureau's public service announcements that help bring KPR's signal to thousands of Kansas homes in this half of the state:

"Good neighbors work together. They respect each other's needs and rights. And the best agricultural producers are those who honor their heritage by adapting current operations to meet future goals."

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STATE OF KANSAS

Committee Assignments

Agriculture
Education
Information Technology, Chairman
Local Government

Senator Tim Huelskamp, Ph.D.

Testimony by Senator Tim Huelskamp
Senate Natural Resources Committee – SR 1809
Thursday, March 11, 2010

Dear Chairwoman McGinn and members of the Committee:

I am here today to encourage the passage of Senate Resolution 1809, a resolution opposing the U.S. Environmental Protection Agency's decision to regulation greenhouse gases (GHG).

I know there are many conferees here today – and I appreciate their shared concern about the drastic redirection of the EPA. I thank them for their presence and their expertise. In particular, I am very excited by the comments from our congressional delegation.

I will only offer three comments regarding this radical decision to declare GHG a toxic pollutant. First, I contacted the EPA last December about this issue in my role as your senate colleague and as a farmer. After two and half months, they claimed to have never received the letter – and then suddenly discovered it somewhere in the system. I have no response from them to date. This is the type of bureaucratic nonsense we have sadly come to expect of the EPA.

Second, it is clear that the EPA and indeed the Obama Administration are attempting to foist a massive new regulatory scheme upon our country via bureaucratic fiat. Taking such a route not only bypasses the normal avenue of input from the American people, it also circumvents the federal legislative process. And the reason is simple - because Congress and the American people refuse to support and pass their cap-and-trade legislative proposals.

Third, if the proposed ruling is implemented, there is no doubt that it will have a devastating impact on the state of Kansas, particularly our agriculture, oil and gas and manufacturing industries. Basing a whole host of new federal regulations upon the theory of global warming, global climate change or whatever they are calling it this week, is simply wrong and will further cripple our state and national economy.

In conclusion, please join me in asking either the EPA to rescind its decision or Congress to pass a disapproval resolution. It is critical that economic consequences be taken into account and the normal legislative process pursued. In so doing, I am hopeful we can adopt common sense policies truly based on sound science, not propaganda.

Thank you for your time.

SENATE NATURAL RESOURCES
3-11-10
Attachment 4

**Kansas Independent Oil & Gas Association**
**800 SW Jackson Street - Suite 1400**
**Topeka, Kansas 66612-1216**
**785-232-7772 FAX 785-232-0917**
**Email: kiogaed@swbell.net**

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**Testimony to Senate Natural Resources Committee**

**Senate Resolution 1809**
**A Resolution opposing the United States Environmental Protection Agency's greenhouse gas regulation by rulemaking**

Edward P. Cross, President
Kansas Independent Oil & Gas Association

March 11, 2010

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Good morning Chair McGinn and members of the committee. I am Edward Cross, President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents the interests of independent oil and natural gas producers in Kansas. With over 1,400 members across the entire state, KIOGA is the lead state and national advocate for Kansas independent oil and natural gas producers. Our members account for 86% of the oil and 63% of the natural gas produced in Kansas. I am responsible for public policy advocacy and interaction with external stakeholders including elected officials, regulators, governmental decision-makers, and community thought leaders. I am here this morning to express our support for Senate Resolution 1809 (SR 1809).

The Environmental Protection Agency (EPA) accurately characterizes the rationale for this regulatory proposal in its preamble:

> EPA is proposing to tailor the major source applicability thresholds for greenhouse gas (GHG) emissions under the Prevention of Significant Deterioration (PSD) and title V programs of the Clean Air Act (CAA or Act) and to set a PSD significance level for GHG emissions. This proposal is necessary because EPA expects soon to promulgate regulations under the CAA to control GHG emissions and, as a result, trigger PSD and title V applicability requirements for GHG emissions. If PSD and title V requirements apply at the applicability levels provided under the CAA, State permitting authorities would be paralyzed by permit applications in numbers that are orders of magnitude greater than their current administrative resources could accommodate. On the basis of the legal doctrines of ''absurd results'' and ''administrative necessity,'' this proposed rule would phase in the applicability thresholds for both the PSD and title V programs for sources of GHG emissions.

EPA subsequently released its endangerment determination and created the scenario it projects will cause the "absurd results" that it must now concoct a regulatory framework to address. Fundamentally, EPA's flawed interpretation of the CAA causes its catastrophic results – results that run counter to its own assessments of congressional intent in crafting the CAA. As EPA observes in the Proposed Rule:

> ...to apply the statutory PSD and title V applicability thresholds to sources of GHG emissions would bring tens of thousands of small sources and modifications into the PSD program each year, and millions of small sources into the title V program. This extraordinary increase in the scope of the permitting programs, coupled with the resulting burdens on the small sources and on the permitting authorities, was not contemplated by Congress in enacting the PSD and title V programs.

As EPA regularly restates in its justification for its proposal, these consequences were not anticipated by Congress. A good example is:

> The legislative history of the PSD provisions makes clear that Congress intended the PSD program to apply only to larger sources, and not to smaller sources, in light of the larger sources' relatively greater ability to bear the costs of PSD and their greater responsibility for the pollution problems. In enacting the PSD requirements during the 1977 Clean Air Act Amendments, Congress, focused as it was on sources of conventional pollutants and not global warming pollutants, expected that the 100/250 tpy applicability thresholds would limit PSD to larger sources. But because very small sources emit CO2 in quantities as low as 100/250 tpy, a literal application of the threshold to GHG emitters, without streamlining, would sweep in large numbers of small sources and subject them to the high costs of determining and meeting individualized BACT requirements, while also overwhelming permitting authorities' capacity to process those applications.

The clear and overwhelmingly obvious reality that EPA does not want to address is that these issues arise because Congress never intended to use the CAA to address GHG. EPA's own actions – taken for reasons beyond any legal requirement – create the "absurd results" it now seeks to address. Much like the apocryphal boy who murders his parents and then seeks leniency from the courts because he is an orphan, EPA plays the victimized agency that must deal with a regulatory crisis – a crisis of its own making.

These consequences were not unanticipated. KIOGA and other industry groups raised many of them during the comments that were submitted with regard to the endangerment proposal. We restate them here:

> In its Advanced Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions Under the Clean Air Act (GHG ANPR), the Environmental Protection Agency (EPA) presented wide ranging information and suggestions regarding the potential use of the Clean Air Act (CAA) to regulate greenhouse gases (GHG) and the consequences of those possibilities. In this proposal, "...the Administrator proposes to find that atmospheric concentrations of greenhouse gases endanger public health and welfare within the

meaning of Section 202(a) of the Clean Air Act." While this proposed action gives the appearance of a narrowly focused action, it disguises the reality that will lead to broad application of the CAA. While we produce American oil that becomes the fuel for America's vehicles, our primary interest is in this broader application. These comments will broadly discuss several issues including: broad policy considerations of using the CAA for GHG regulations, more specific issues regarding several of the approaches in the context of stationary sources that were raised in the GHG ANPR and the particular implications on American oil and natural gas exploration and production.

**Broad Policy Implications of Using the Clean Air Act**

The GHG ANPR and this proposal are driven almost exclusively by the United States (US) Supreme Court decision in *Massachusetts v. EPA*. While the Supreme Court seemed fascinated with the capaciousness of the definition of "air pollutant" under the CAA, it ultimately concluded that EPA "...must ground its reasons for action or inaction in the statute." To make such a decision it is essential that EPA consider the legislative history of the CAA to determine intent and scope.

Clearly, when the CAA was enacted in 1970, Congress was focused on addressing air pollution in the US. Its concept of these pollutants consistently shows its interest focused on industrial and vehicle-specific emissions. It did not view the common compounds in the atmosphere – nitrogen, oxygen and carbon dioxide – as air pollutants. The role of carbon dioxide was viewed as beneficial – essential for plant growth and oxygen generation – a role that is largely ignored in the GHG ANPR. The issues of the time are reflected in the early criteria pollutants – sulfur oxides, nitrogen oxides, particulates, carbon monoxide and ozone. These were the areas where Congress sought to change the nature of American society.

While international interest in addressing air pollution was growing in 1970, its focus was on national actions needed to address local pollution. Global climate concerns were too vague and too uncertain to suggest that Congress had any intent to address it in the structure of the CAA. Moreover, if it had, the likely concern would have been threats of global cooling. Roughly a decade before CAA enactment, scientists largely feared that the world was heading toward a new ice age, a concern so broadly held that it was reflected in publications as diverse as the elementary school newspaper, *The Weekly Reader*. Similarly significant, when Congress did have an opportunity to consider using the CAA to address a global climate issue, it chose not to. By 1977, when the first major amendments to the CAA were enacted, stratospheric ozone threats were significant policy issues. However, rather than assert active policy provisions in the CAA, Congress chose to explicitly limit the CAA to analysis while addressing regulation through other laws. Only after international agreements on stratospheric ozone protection were developed did Congress provide the specific authorities of Title VI in the CAA to address them. This history affirms that Congress oriented the CAA to address US-limited issues.

EPA needs to recognize that Congress' actions with regard to the authorities within the CAA show a level of detail not found in many laws. Congress set limits on the size of facilities to be regulated. It created entire programs to detail how nonattainment should be addressed for ozone and carbon monoxide. It defined the nature of the Prevention of Significant Deterioration

(PSD) program. It reached into structuring the composition of gasoline and other vehicle fuels. To suggest that GHG regulation should fall out of these complex sections of the CAA in the ad hoc fashion that EPA presents in the GHG ANPR and would create by adopting this proposal is simply inconsistent with the history of the CAA.

Global climate management is an enormously complex challenge, one that can only be addressed on an international stage. In contrast to the national air pollution programs in the CAA, global GHG emissions do not present a risk to public health at anything approaching current ambient levels. In fact, despite the public perspective that environmental advocates have encouraged, the environmental consequences are based on unsettled science. Data suggest that climate change is occurring, but determining the role of anthropogenic emissions remains elusive. Even the determination of environmental effects must be based on the results of complex and ever-changing computer models – not on clear evidence like those used to judge the effects of criteria pollutants. As EPA observes in the GHG ANPR, local actions – even national actions – will not produce measurable changes in the ambient concentrations of GHG. Realistically, only widespread action by all of the major GHG emitting nations can hope to produce significant results.

Failure to develop international action with broad commitment by all key GHG emitting nations could be catastrophic to the US if EPA pursues national regulation under the CAA. The policies EPA suggested in the GHG ANPR will do little to affect ambient GHG. However, they would define American industrial structure for the next half century. The GHG ANPR referenced the underlying challenge in its discussion of "leakage" – the movement of GHG emissions from the US to other countries. The past decade demonstrates the reality of this consequence. Largely unfettered industrial development in key countries, like China and India, has drawn enormous international investment – including shifting significant manufacturing capacity from the US. A US-only regulatory effort under the CAA would dramatically exacerbate this shift. It would be a change with no environmental benefit but produce substantial damage to the US economy and national security.

One area particularly affected would be energy and national energy security. Given the unstable energy world, these are consequences that cannot be endured. When the CAA was enacted in 1970, America's oil production had just then peaked. The 1973 Arab Oil Embargo had yet to occur. The US imported 1.3 million barrels/day of crude oil compared to 11.3 million barrels/day of American production. By 2009, over 66 percent of America's oil demand came from imports. Nevertheless, the US continues to be a large producer of petroleum – the third largest in the world. Oil accounts for about 40 percent of America's energy supply; natural gas provides approximately 23 percent. These fuels and coal – which provides another roughly 23 percent of American energy – would be the most significantly affected by CAA regulation of GHG. America's economy hinges on energy. Today, the US consumes about 22 percent of the world's energy. This energy produces 30 percent of the world's Gross Domestic Product. This link is undeniable. Future economic success means that more energy will be needed. The Energy Information Administration estimates that US energy demand will need to increase by about 30 percent over the next 25 years. Certainly, growth in new energy alternatives will meet some of this need while conservation and efficiency will be essential as well. However, oil, natural gas, and coal will continue to be the primary sources of American energy. A GHG

regulatory program needs to recognize this reality. Equally significant, it needs to recognize that constraining the development of American resources will result in greater risk to US security – a consequence that is unacceptable in the current state of the world. For these reasons, we believe that the CAA is not an appropriate law to regulate GHG nor was it ever intended to be.

Nevertheless, EPA chose to follow the path of pulling GHG under the scope of the CAA. Now, it must deal with the consequences. This tailoring proposal demonstrates how serious those consequences can be.

At the heart of the issue EPA tries to address in the tailoring proposal is clear statutory language defining the size of stationary sources subject to regulation under the CAA PSD and Title V programs. EPA asks us to believe that it can ignore the fundamental structure of the CAA under two legal theories – "absurd results" and "administrative necessity". The tailoring proposal explanation tries to weave a path through these concepts, but the justifications are not compelling. They rely on stretching relatively narrow instances in cases where consequences fall on agencies without the agencies' complicity. Here, EPA's situation differs dramatically. In the instant case, EPA's actions create the consequences it must now address. While it is obvious that – if Congress had intended to address GHG under the CAA – Congress would not have set stationary source thresholds at 100 or 250 tons/year, the standard in the law is, in fact, what it is. Inescapably, one must conclude that Congress did not intend to regulate GHG under the CAA. But, despite pages of explanations about the disastrous consequences of the direct application of the CAA stationary source definitions to GHG, EPA concludes that the solution is to contort little used regulatory theories to save the agency from its own actions. While we believe that the application of the CAA thresholds to GHG sources would be disastrous, we cannot be comforted that EPA can sustain the thresholds described in the tailoring proposal based on the thin justification it presents.

However, we must also question why – even in light of the endangerment determination – EPA believes it must pursue the course it set forth in the tailoring proposal. An endangerment finding under Title II of the CAA does not necessarily translate into direct regulation of stationary sources. The PSD program may be more easily explainable. PSD does not relate to health based concerns. The PSD legislative history, in fact, is clearly built upon non-health based air quality issues. It specifically applies in areas that meet federal health based National Ambient Air Quality Standards (NAAQS). If EPA were to recognize this distinction, it could reasonably conclude that PSD stationary source permitting is not subject to action based on the GHG endangerment determination. Consideration of Title V applicability follows a similar path. All of the stationary sources subject to Title V permitting are triggered by other elements of the CAA that make determinations regarding the applicability of that section to the sources required to get permits. The Title II endangerment determination is not one of the processes that trigger Title V. This perception of the CAA is reflected in EPA's statement on the consequences of the endangerment determination. EPA states:

> Moreover, EPA does not believe that the impact of regulation under the CAA as a whole, let alone that which will result from this particular endangerment finding, will lead to the panoply of adverse consequences that commenters predict. EPA has the ability to fashion a reasonable and common-sense approach to address greenhouse gas emissions and

climate change. The Administrator thinks that EPA has and will continue to take a measured approach to address greenhouse gas emissions.

EPA would be far better positioned if it concluded that the PSD and Title V portions of the CAA are not triggered by the Title II endangerment determination than to follow the rationale of the tailoring proposal relying on tenuous legal theories of "absurd results" and "administrative necessity".

We further question EPA's sleight-of-hand approach on the regulatory costs of its actions. In the initial endangerment proposal, EPA argues that nothing the finding would result in new regulatory burdens for PSD stationary sources. In this tailoring proposal, it justifies its actions on the disastrous consequences of the program on stationary sources under the PSD and Title V programs because of the endangerment determination. It, in fact, argues that the tailoring proposal will alleviate the otherwise severe burdens that would be imposed. We believe that the nation deserves to understand the consequences of the endangerment determination if EPA concludes that its conclusion compels this broad expansion of these stationary source programs. As we have suggested earlier – and at least some at EPA seem to suggest as well – the Title II endangerment determination does not have to create the consequences set forth in the tailoring proposal. But, clearly, under the vast confusion that EPA has created by being on both sides of the issue, the nation needs to understand the consequences.

Similarly, we must question the agency's motives with regard to oil systems and natural gas systems that explore for and produce America's oil and natural gas. EPA argues that Congress never intended to extend the regulatory requirements to the statutory stationary source sizes in the CAA. While we agree for different reasons, we oppose efforts underway within EPA for both GHG emissions and criteria pollutants to effectively revise the definition of stationary sources for oil production and natural gas operations. When EPA proposed reporting requirements under the Mandatory Reporting for Greenhouse Gases rule, it suggested that it was evaluating different facility definitions for onshore petroleum and natural gas production. EPA stated in part:

> One approach we are considering for including onshore petroleum and natural gas production fugitive emissions in this reporting rule is to require corporations to report emissions from all onshore petroleum and natural gas production assets at the basin level. In such a case, all operators in a basin would have to report their fugitive emissions from their operations at the basin-level. For such a basin-level facility definition, we may propose reporting of only the major fugitive emissions sources; i.e., natural gas driven pneumatic valve and pump devices, well completion releases and flaring, well blowdowns, well workovers, crude oil and condensate storage tanks, dehydrator vent stacks, and reciprocating compressor rod packing. Under this scenario, we might suggest that all operators would be subject to reporting, perhaps exempting small businesses, as defined by the Small Business Administration.

So, while EPA argues that it needs to tailor the definition of stationary sources to reduce its burden in this proposal, elsewhere, it is devising artificial approaches to alter the definitions of stationary source facilities solely for petroleum production and natural gas operations to

increase the regulatory burden. Congress clearly spoke to the question of aggregating petroleum production and natural gas facilities under the CAA when it prohibited aggregation in the 1990 CAA Amendments. EPA should listen.

**Conclusion**

I appreciate the opportunity to provide these comments. The global climate debate remains a critical challenge for America. But, in this proposal EPA is desperately trying to unravel the overwhelming consequences of an ill-founded interpretation of the CAA. The CAA was never written with GHG emissions management as a part of its structure. EPA cannot twist the structure of the Act to create a sound regulatory approach. The options EPA presents would result in litigation that it will not be able to withstand; its legal rationale is too fragile. Instead, EPA needs to revisit the fundamental basis for including stationary sources within the consequences of its Title II endangerment determination. More than that, EPA owes the country a clear explanation of the costs its actions will impose. Finally, we cannot accept the idea that for other stationary sources, EPA seeks to reduce the regulatory burden while it devises plans to increase the burden on American oil and natural gas production.

We urged EPA to reject the use of the CAA as a GHG regulatory approach, to seek effective international agreements and to seek Congressional action on global climate policy that will provide America with the energy security and the industrial development it needs to provide for future jobs and economic growth.

KIOGA supports the passage of SR 1809. Thank you for your time and consideration. I stand for questions.

# NATIONAL COOPERATIVE REFINERY ASSOCIATION

## Testimony re: SR 1809 Opposing US EPA GHG Regulation by Rulemaking

### Hearing of the Senate Natural Resources Committee

**Presented by Galen Menard**
**on behalf of**
**National Cooperative Refinery Association**
**March 11, 2010**

Madame Chairman, Members of the Committee:

My name is Galen Menard and I am Vice President of Supply and Trading with National Cooperative Refinery Association (NCRA). NCRA, a petroleum refinery based in McPherson, Kansas, is a cooperative organized under the Cooperative Marketing Act.

First of all, NCRA wants to express appreciation to the Chairman of this Committee for the opportunity to provide input on Senate Resolution No. 1809. The issue behind the need for SR 1809 is not only a concern to the petroleum refining business for which NCRA is involved in but also to the many other forms of business in Kansas such as agriculture and manufacturing which provide valuable employment opportunities to Kansans.

NCRA interest in SR 1809 is as a farmer-owned cooperative. NCRA was established in 1943 and is an energy company that purchases crude oil and refines it into finished fuels for farm equipment, trucks and automobiles. As a fuel producer, NCRA's roots and purpose is to provide fuel for the farms of Mid-America through our member-owners.

NCRA is the largest farmer-owned refinery in the United States and has three farmer member-owners—CHS, Inc., GROWMARK, Inc. and MFA Oil Company—which in turn serve the needs of several hundred thousand farmer member-owners throughout the Midwest, Northwest and Great Plains.

Our refinery in McPherson, Kansas has a capacity of 85,000 barrels per day of Crude Oil and 15,000 barrels per day of Natural Gasoline Liquids. Refinery crude runs in fiscal year 2009 totaled 31 million barrels. Net sales in 2009 of over 32 million barrels of refined petroleum products totaled $2.3 billion.

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Unlike major oil companies, NCRA does not own any crude oil production or downstream marketing capacity as potential sources of revenue. NCRA is entirely dependent on revenues from its refined product sales to operate the refinery, including any and all costs of regulatory compliance.

NCRA continues to reinvest in our refinery. For example, as part of our ongoing Clean Fuels investment program, NCRA now produces ultra-low sulfur diesel fuel, due to an investment in excess of $400 million. NCRA is in the process of investing $82 million to complete a gasoline benzene reduction project. NCRA's management and Board are evaluating a significant investment in a Heavy Crude Expansion Project. These investments will help produce cleaner fuel and provide significant environmental benefits, both at the refinery and during downstream consumption.

We seek your support on a matter of great urgency to the State of Kansas. The U.S. Environmental Protection Agency (EPA) is poised to impose regulation of carbon dioxide and other greenhouse gases (GHG) emitted from hundreds of thousands of stationary sources. While the issue of GHG regulation is heatedly debated in Congress, EPA has gone forward on its own by making an endangerment finding under the Clean Air Act's motor vehicle program, finding that GHGs constitute air pollution that endangers health and welfare in the United States.

Seventeen petitions have been filed challenging the endangerment finding, including separate petitions from Alabama, Texas, and Virginia. These petitions recognize that, through its finding, EPA sets in motion not only regulation of GHG emissions from motor vehicles but also, through the Clean Air Act's Prevention of Significant Deterioration (PSD) and Title V permit programs, regulation of all sources of GHGs that emit over 100 to 250 tons per year, depending on source. In terms of carbon dioxide emissions, this means that sources ranging from office buildings, hospitals, large churches, and small business, as well as manufacturing and power generating facilities, will need to secure PSD permits before constructing or modifying facilities. All of these facilities will be required to obtain Title V permits. Among other things, the PSD permits will impose "best available control technology" limitations on GHG emissions.

EPA's actions will have a chilling effect on the ability of companies in our State to grow and add jobs. This ruling could limit NCRA's ability to adapt to a changing world economic environment, reduce our ability to reinvest in our refinery, and will hurt our member farmer owners. More significantly, citizens and businesses will be impacted by higher prices for energy intensive goods and services as virtually all major construction and renovation will be subject to dilatory, expensive, and uncertain permitting. EPA efforts to minimize the impact of its own regulation by increasing the 100 and 250 ton per year threshold are novel, uncertain of success, and vulnerable to legal challenge. Moreover, nothing in these regulatory efforts will eliminate the significant burden to States in terms of issuing permits. In summary, it will kill jobs and hurt our State. A February 22, 2010 letter from EPA to the Senate does not resolve these problems. In that letter, EPA Administrator Lisa Jackson announced EPA's intention to attempt to delay the impact of the PSD and Title V permitting programs until 2011.

The State of Nebraska is leading efforts to mobilize States to intervene in the case in support of Alabama, Texas, and Virginia. A strong showing of concerned States opposing the endangerment finding is critical, because 16 States (AZ, CA, CT, DE, IA, IL, ME, MD, MA, NH, NM, NY, OR, RI, VT, and WA) have sought to intervene on EPA's side to uphold the endangerment finding. We need your assistance to counterbalance these efforts and to show the Court that many States are concerned over the effect of GHG regulation on their citizens, businesses, and economies.

In summary, NCRA is in support of SR 1809 and encourages this committee to vote in favor of passing the resolution and sending a message to the leadership of Kansas that the EPA's endangerment finding is a significant threat to the business environment in the State of Kansas.

Thank you very much for permitting me to testify and I will be happy to yield to questions.

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*Kansas Grain & Feed Association*
Kansas Agribusiness Retailers Association

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**Senate Natural Resources Committee**
**March 11, 2010**

## RE: SR 1809 — Opposing EPA's green house gas regulation.

Chair McGinn and members of the Senate Natural Resources Committee, thank you for the opportunity to comment in favor of SR 1809. I am Leslie Kaufman, Executive Director of the Kansas Cooperative Council (KCC) and I appear today on behalf of the KCC, Kansas Grain & Feed Association, and the Kansas Agribusiness Retailers Association. Together, our members represent the entire range of the grain handling and crop input industries, along with the full spectrum of the cooperative family — agricultural, utility, financial and consumer co-ops. Our members are very concerned about the direction the US Environmental Protection Agency (EPA) is pursuing in relation to greenhouse gas (GHG) and climate change regulation.

We do not believe the federal Clean Air Act (CAA) was intended to encompass the type of regulatory framework the US EPA intends to implement in their efforts to reduce GHGs. The EPAs approach is extremely broad, will bring entities not previously regulated under the CAA into the regulated community, and place heavy financial burdens on agriculture, refining and other industries to mitigate emissions and/or purchase allowances.

Our associations have long-advocated for basing regulations on sound scientific principles coupled with the ability to affordably and practically implement the regulations. The various scenarios being discussed to address GHGs and climate change, by EPA and before Congress, have largely been lacking in terms of balanced regulation. Additionally, many of the components within these regulatory frameworks will place American producers at a disadvantage in relationship to global competitors in countries which do not even have the level of regulation we currently have, let alone what is envisioned in these GHG frameworks.

American producers will be hampered by additional costs of production and US consumers will see prices of goods and services increase as the these additional regulatory costs are passed through the system. Agriculture will be especially hard hit as fuel and fertilizer costs are expected to increase noticeably and unlike other industries, agriculturalist are most often "price takers" in the market place, making it impossible to pass additional cost of production up the supply chain.

We have been pleased to see the introduction of bills at the federal level that would reverse EPAs direction relative to GHG regulations. Additionally, direct encouragement for EPA to pull-back their GHG regulatory plans, such as SR 1809 which is before you today, is another avenue for expressing opposition to their approach. As such, we support the resolution and ask for your favorable action on SR 1809.

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Kansas Cattlemen's Association
606 N. Washington St.
Junction City, KS 66441

Senate Natural Resources Committee
Kansas State Capitol
300 SW 10th St. Room 144-S
Topeka, KS 66612

Chairwoman McGinn and Members of the Committee:

My name is Brandy Carter, and I am the Executive Director of the Kansas Cattlemen's Association. KCA supports Senate Resolution 1809.

If the Environmental Protection Agency is permitted to declare green house gases as a toxic pollutant, methane a livestock emission may be regulated and agriculture may be under attack. At present time, there is no internationally recognized set of standards available to measure livestock emissions. Therefore, how can the EPA legally implement regulations without accepted guidelines to follow? Until such time comes, it is irresponsible for the EPA to even consider the possibility of regulating green house gas emissions from livestock sources or declaring them a toxic pollutant. Furthermore, enteric fermentation is a normal digestive process where microbial populations in the digestive tract break down food and cause animals to excrete methane ($CH_4$) gas as a by-product. Methane is then emitted from the animal to the atmosphere through exhaling or eructation.[1] These naturally occurring emissions do not endanger public health. Emissions from all agricultural sources are minimal, 6.4 % of the total U.S. emissions and have not been proven to be a toxic pollutant. In fact, due to land use for agriculture, producers provide a benefit to the environment. [2]

If green house gases from livestock sources are regulated by the EPA as a toxic pollutant, producers could be subject to permits and costly processes, therefore regulating these small producers out of business. With 89.4% of the beef inventory deriving from small ranches, this would be devastating to the U.S. cattle industry. [3] For every dollar earned in agriculture, $7 is generated in economic stimulus. The economic ramifications of this to rural America much less the national food security issues must

[1] U.S. Agriculture and Forestry Greenhouse Gas Inventory: 1990-2001.
[2] EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006, April 15, 2008.

[3] USDA, National Agricultural Statistics Survey: Farms, Land in Farms, and Livestock Operations, 2007 Summary, Feb. 2008.

be weighed before allowing the EPA to impose unreasonable regulations and declaring all green house gases a toxic pollutant.

Therefore, Kansas Cattlemen's Association strongly encourages you to look at all consequence of any action taken by the EPA with regards to green house gases. For instance, foreign countries do not have the same safety standards for food production as the U.S, nor do foreign countries adhere to the same environmental regulations. If we lose production in Kansas and the U.S., foreign countries will be readily importing more products to the U.S.

As environmental stewards, livestock producers understand the importance of maintaining a sustainable environment. However, invalidly regulating emissions will undoubtedly cause economic hardship to the true stewards of the land and all consumers of the United States of America.

Kansas Cattlemen's Association encourages you to vote in support of this resolution and highly encourages the state of Kansas to protect our producers, our economy, and our consumers from an over reaching Environmental Protection Agency.

Sincerely,

Brandy Carter
CEO/Executive Director

**Kansas Cattlemen's Association**
606 N. Washington • Junction City, KS 66441 • Phone: 785-238-1483 • Fax: 785-238-1518

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Kansas Cattlemen's Association
606 N. Washington St.
Junction City, KS 66441

Senate Natural Resources Committee
Kansas State Capitol
300 SW 10th St. Room 144-S
Topeka, KS 66612

Chairwoman McGinn and Members of the Committee:

My name is Brandy Carter, and I am the Executive Director of the Kansas Cattlemen's Association. KCA supports Senate Concurrent Resolution 1623.

As we are seeing fewer and fewer rural communities and people in the United States involved in agriculture, Kansas is one of the most productive agricultural states in the United States. Total agricultural production value for Kansas is estimated to be approximately $6.99 billion each year. Agriculture is tremendously important to our state's economy.

In the Flint Hills, burning pastures is essential to providing fresh grass and removing dead grass lacking nutrition. Burning rejuvenates the land and adds the needed nutrition to the ground allowing for healthier cattle.

Last year, due to weather conditions, most Flint Hills pastures were burned in three days: April 10, 11 and 12. The Kansas Department of Health and Environment recommends that we as cattle producers spread out burning from February to May. However, as producers, we are reliant on the weather. Would burning be conducive last month when snow was predominant and cold weather would not assist in any vegetative growth? We are at the mercy of the weather: wind conditions, precipitation, and temperature. All of these have to be considered to safely and appropriately maintain and enrich the flint hills. As well, the weeds that are removed with burning are still dormant in the winter and will not be removed by February/ early March burning.

If ranchers only burn 160 acres at a time which has been recommended by KDHE, it would take years to provide nutrient rich vegetation. This would have a direct affect of cattle production, agriculture, and our state's economy.

As the EPA is concerned about flint hills burning in relation to the pollution in the Kansas City and Wichita metro areas, the main polluters in the metropolitan region are vehicles and industry. Producers are stewards of the environment. Burning of the Flint Hills is an intricate part of preserving the land and is critical to Kansas agriculture. Kansas Cattlemen's Association highly encourages you to support this resolution that urges Congress to exempt the Flint Hills tall grass prairie from any United States EPA Smoke Management Plan.

With Best Regards,

Brandy Carter

Brandy Carter

JERRY MORAN
FIRST DISTRICT
KANSAS

COMMITTEE ON
AGRICULTURE

RANKING MEMBER
SUBCOMMITTEE ON GENERAL FARM
COMMODITIES AND RISK MANAGEMENT

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# Congress of the United States
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**Testimony to the Kansas Senate Natural Resources Committee**

**House Joint Resolution 66**
**A Joint Resolution to Disapprove the Environmental Protection Agency Regulation "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act."**

**Congressman Jerry Moran**
**U.S. Representative for the First District of Kansas**
**March 11, 2009**

Chairman McGinn and members of the Senate Natural Resources Committee, thank you for allowing me the opportunity to submit written testimony on H. J. Res. 66, legislation I introduced in the House of Representatives on December 16, 2009. H. J. Res. 66, if enacted, would invalidate an Environmental Protection Agency (EPA) final rule published on December 15, 2009. The rule declares that greenhouse gases endanger the public health and welfare.

On December 15, 2009, the EPA published "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act."[1] Although this rule does not regulate emitters of greenhouse gases, it lays the groundwork for the EPA to begin proposing regulations to control how and to what extent greenhouse

[1] Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66496 (Dec. 15, 2009).

gases may be emitted. This rule has the potential to raise the cost of motor fuel, electrical power, and all types of consumer goods. To prevent imposition of such costs on Kansas residents, it is necessary to send a clear signal to the EPA that Congress does not want it to regulate greenhouse gases under the Clean Air Act. H. J. Res. 66 would invalidate the EPA's December 2009 endangerment finding and prevent it from promulgating substantially similar regulations without Congressional authorization.[2]

The beginning of EPA's attempt to regulate greenhouse gases, began on April 2, 2007, when the U.S. Supreme Court issued its opinion in *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007). In this opinion, the Court held the Clean Air Act's expansive definition of "air pollutant" included greenhouse gases.[3] It said that the definition of "air pollutant" "embraces all airborne compounds of whatever stripe . . . ."[4] The Court held short of ordering EPA to regulate greenhouse gases, however, because under the Clean Air Act the EPA must determine whether an air pollutant (*i.e.* greenhouse gases) endangers public health and welfare.[5] Therefore, under the Court's opinion, the EPA was not required to regulate greenhouse gases. Instead, the EPA could refuse to regulate greenhouse gas emissions if it were to make a finding that greenhouse gases do not endanger public health and welfare or if it made a finding that it had a reasonable explanation for not making an endangerment finding. A reasonable explanation for not making an endangerment finding could include lack of reliable scientific evidence that establishes a causal link between greenhouse gas emissions and climate change.

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[2] 5 U.S.C. § 801(b)
[3] 42 U.S.C. § 7602(g).
[4] *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 529 (2007).
[5] *See id.* at 533.



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Although the *Massachusetts* Court acknowledged that greenhouse gases could fit the definition of "air pollutant", it acknowledged the possibility that Congress "might not have appreciated the possibility" that greenhouse gases like carbon dioxide could be considered a pollutant.[6] This statement by the Court lays the groundwork for why greenhouse gases should not be regulated under the Clean Air Act despite technically fitting the definition of an air pollutant.

While the definition of "air pollutant" may be large enough to include greenhouse gases, the provisions of the Clean Air Act that set emission levels subject to regulation and permitting suggest greenhouse gases were never contemplated by the Act's drafters. It should be noted that the Supreme Court never examined these sections of the Clean Air Act in its opinion in *Massachusetts*. In fact, greenhouse gases fit so poorly into the existing statutory framework of the Clean Air Act that functionally regulate pollutant emissions, the EPA is arguing it does not have to follow the plain text of the Clean Air Act because the outcome would be an "absurd result".[7]

Once an air pollutant is determined to endanger the public health and welfare by the EPA, certain sections of the Clean Air Act are triggered. Among them are Prevention of Significant Deterioration of Air Quality provisions (PSD).[8] Under PSD, "major emitting facilities" that are "new major stationary sources" or "major modifications" at existing major stationary sources must, among other things, demonstrate that emissions of an air pollutant will not exceed allowable concentrations set by the EPA and apply

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[6] *Id.* at 532.
[7] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule. 74 Fed. Reg. 55292. 55303 (proposed Oct. 27, 2009).
[8] *See* 42 U.S.C §§ 7470-7492.

"best available control technology" (BACT).[9] Major emitting facilities specifically include facilities that emit between 100 and 250 tons per year or more of an air pollutant.[10] Once a facility triggers the PSD provisions, it is also subject to permitting under Title V of the Act.[11]

The Clean Air Act generally gives no authority to the EPA to vary the 100 to 250 ton per year trigger for the PSD provisions.[12] The EPA, however, has publicly recognized that regulating greenhouse gases at this level is absurd and argues in its proposed rule that it does not have to follow the unambiguous terms of the statute because it would lead to "absurd results."[13] Therefore, the EPA has proposed to limit triggering of the PSD provisions for greenhouse gas emissions to major emitting facilities that emit 25,000 tons per year or more of greenhouse gases.[14] Reliance on an obscure doctrine, which the EPA itself admits courts are reluctant to invoke, poses a significant threat that the EPA's 25,000 ton per year threshold will not hold.[15]

If the EPA's "absurd results" doctrine does withstand scrutiny, the EPA would be forced to follow the terms of the statute and enforce Title V permitting and BACT on facilities that emit between 100 and 150 tons of greenhouse gases per year. To put that into perspective, the National Cattlemen's Beef Association (NCBA) has estimated the 25,000 tons per year threshold would affect a feedyard with 29,300 head of beef cattle.[16]

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[9] 42 U.S.C. §§ 7475, 7479.
[10] *See* 42 U.S.C. § 7479.
[11] *See* 42 U.S.C. §§ 7661-7661f.
[12] *See* 42 U.S.C. § 7479.
[13] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Fed. Reg. at 55303.
[14] *See id.* at 55351.
[15] *See id.* at 55303 (explaining that courts are reluctant to invoke the absurd results doctrine).
[16] Press Release, Kansas Livestock Association, KLA: EPA Subjects Livestock Businesses to Emissions Reporting (Sept. 25, 2009), *available at* http://www.cattlenetwork.com/KLA--EPA-Subjects-Livestock-

Conversely, the American Farm Bureau Federation has estimated that a 100 ton per year threshold would affect an operation with only 50 beef cattle.[17] According to the 2007 Census of Agriculture, regulating greenhouse gases from cattle herds of 50 cows or more would affect over 47 percent of Kansas cattle ranches.[18]

While a threshold of 25,000 tons per year would be better than the statutorily prescribed 100 to 250 tons per year threshold, the 25,000 tons per year mark would have a substantial effect on the Kansas electrical power sector, which is heavily reliant on coal. The cost of implementing BACT, as well as limits placed on plant expansions and modifications pose the threat of substantially increasing costs to Kansas electricity consumers. In addition, other sectors like petroleum refining, manufacturing, and large agricultural operations would be affected by the 25,000 tons per year threshold. If the EPA is not successful implementing its 25,000 tons per year threshold, however, few businesses would escape the permitting process.

Over the last year, Congress has debated the best way to proceed in regard to regulation of greenhouse gas emissions. On June 26, 2009, the U.S. House of Representatives passed H.R. 2454, the American Clean Energy and Security Act of 2009, commonly known as Cap and Trade legislation. I opposed this legislation for a number of reasons including the excessive costs it would place on U.S. citizens. The nonpartisan Energy Information Administration (EIA) conducted an analysis of H.R. 2454 and found that by the year 2030 electricity costs could increase between 10 to 96 percent, gasoline

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Businesses-To-Emissions-Reporting/2009-09-25/Article.aspx?oid=840339&fid=CN-LATEST_NEWS_&aid=680.

[17] Letter from Mark Maslyn, Executive Director, American Farm Bureau Federation, to EPA, Docket ID No. EPA-HQ-OAR-2008-03180 (2008) (on file with author and EPA).

[18] National Agriculture Statistics Service, U.S. Department of Agriculture, 2007 CENSUS OF AGRICULTURE, *Cattle and Calves Inventory and Sales: 2007 and 2002*, at 381, *available at* http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_011_011.pdf



9-5

could increase between 35 and 81 percent, and natural gas could increase between 10 and 93 percent.[19] Whether at the low end or high end of the range estimated by EIA, the price increases represent substantial increases that would hurt Kansans.

Although EPA regulations under the Clean Air Act would not function in the same manner as the cap and trade provisions of H.R. 2454, by all accounts the effects of EPA regulations would be worse. Unlike H.R. 2454, EPA regulations would not build in allowances to phase in emission restrictions and would not allow businesses to buy credits to offset greenhouse gas emissions that exceed the limits set by H.R. 2454. Instead, under the Clean Air Act, the EPA would have the authority to halt new manufacturing or power generation projects that emit greenhouse gas emission unless expensive technologies were implemented to reduce emissions or sequester them.

If the current strategy is pursued by the EPA, it is almost certain to result in increased consumer costs and lost jobs. This is something that cannot be tolerated in our fragile economy. To stop the EPA from burdening Kansans with increased costs and put the decision making authority squarely in the hands of Congress, I introduced H. J. Res 66.

H. J. Res. 66 is written pursuant to the Congressional Review Act of 1996 (CRA).[20] The CRA was put in place to allow Congress to have ample time to review new regulations, and if necessary, reject those regulations should a regulation be determined contrary to Congress' will. The CRA not only sets forth a review timeline before a regulation can become effective, but also provides expedited procedures for the joint

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[19] *See* ENERGY INFORMATION ADMINISTRATION, ENERGY MARKET AND ECONOMIC IMPACTS OF H.R. 2454, THE AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009 (Aug. 2009), *available at* http://www.eia.doe.gov/oiaf/servicerpt/hr2454/pdf/sroiaf(2009)05.pdf.

[20] 5 U.S.C. § 801 *et. seq.*



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resolution's consideration and limits the type of regulations an agency can promulgate subsequent passage of a disapproval resolution.

The CRA process begins once the agency transmits the regulation to Congress. After Congress receives a regulation, all rules have a waiting period before the rule can become effective. The Administrative Procedures Act sets the waiting period at 30 days.[21] The CRA extends the waiting period to 60 days for "major rules".[22] The EPA endangerment finding is not classified as a major rule and the EPA endangerment regulation became effective January 14, 2009.[23] Should a disapproval resolution pass during the remaining term of the 111th Congress, however, the rule will be treated as though it had never gone into effect.[24]

Once the regulation is received by Congress, the CRA begins an initiation period and an action period. The action period pertains to expedited procedures in the Senate to prevent a filibuster, block amendments, and establish an expedited timeline for consideration.[25] This procedure does not apply to the House of Representatives.

The initiation period is the period of time during which a disapproval resolution must be introduced in either chamber of Congress to for a resolution to be eligible for consideration under the CRA.[26] In the House, the most significant benefit is that the CRA not only invalidates the regulation, but also blocks any substantially similar regulation unless subsequently authorized by Congress.[27] Presumably, a disapproval

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[21] 5 U.S.C. § 553(d).
[22] 5 U.S.C. § 801(a)(3).
[23] Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. at 66546.
[24] 5 U.S.C. § 801(f).
[25] 5 U.S.C. § 802.
[26] *See* 5 U.S.C. § 802(a).
[27] *See* 5 U.S.C. § 801(b).

resolution not considered under the CRA would only invalidate the regulation and not prevent the agency from promulgating another similar rule.

H. J. Res. 66 was introduced on December 16, 2009; one day after the EPA published its endangerment finding in the Federal Register. This meets the statutory initiation period and extends CRA procedures to the resolution.

One additional timing requirement is contained in the CRA for rules that are submitted to Congress 60 legislative days before the end of the first session. In such a case, the initiation period resets as of the fifteenth legislative day of the second session.[28] The EPA's endangerment finding for greenhouse gases was submitted within 60 days of adjournment of the first session of the 111th Congress. Because the initiation period resets with the start of the second session of the 111th Congress, it was necessary to introduce another disapproval resolution to activate the CRA provisions. On March 2, 2009, I was able to join with 91 of my colleagues, which include Representative Lynn Jenkins, to sponsor H. J. Res 77. As of March 8, 2009, this resolution had gained 98 sponsors.

Throughout the next legislative year, I plan to work with my colleagues to build support for H. J. Res. 77 and look for ways to enact this critically important legislation. I am grateful to Senator McGinn and the members of this committee for allowing me the opportunity to submit testimony on this important matter. I look forward to hearing your input and finding ways to prevent costly regulations from driving up the cost of living for everyday Kansans.

[28] *See* 5 U.S.C. § 801(d).

**Written Testimony before the Senate Natural Resources Committee**
**SR 1809 – Opposing the U.S. EPA's Greenhouse Gas Endangerment Finding**
**Submitted by J. Kent Eckles, Vice President of Government Affairs**

achieve more

**Thursday, March 11th, 2010**

The Kansas Chamber of Commerce appreciates the opportunity to present testimony in favor of SR 1809, which states Kansas' opposition to the U.S Environmental Protection Agency's greenhouse gas endangerment finding.

The Chamber strongly believes the EPA's finding could lead to regulations that will hamper America's ability to create jobs, stimulate the economy and improve our energy security.

The EPA's proposed endangerment finding opens the door to regulating greenhouse gas emissions under the Clean Air Act, a law which was not created or intended for that purpose. Any future regulations could impact American households and both large and small businesses. Therefore, the State of Kansas has a vital contribution to make in this debate and in detailing the consequences on our state's economic growth and recovery.

There is a right way and a wrong way to discuss the regulation of greenhouse gases. The wrong way is through the EPA's endangerment finding, which triggers Clean Air Act regulation. Because of the huge potential impact on jobs and local economies, this is an issue that requires careful analysis of all available data and options. Unfortunately, the agency failed to do that and instead overreached. The result is a flawed administrative finding that will lead to other poorly conceived regulations further downstream.

The right way is through bipartisan legislation that promotes new technologies, emphasizes efficiency, ensures affordable energy for families and businesses, and defends American jobs while returning our economy to prosperity

We urge the Committee to pass SR 1809 favorably.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any questions regarding this testimony.

THE KANSAS CHAMBER

835 SW Topeka Blvd. Topeka, KS 66612 785.357.6

SENATE NATURAL RESOURCES
3-11-10
Attachment 10

**Testimony of**
**Kansas Electric Cooperatives, Inc.**
**Sunflower Electric Power Corporation**
**Kansas Electric Power Cooperative, Inc.**
**Midwest Energy, Inc.**
**SR 1809**

Kansas Electric Cooperatives, Inc., Sunflower Electric Power Corporation, Kansas Electric Power Cooperative, Inc. and Midwest Energy, Inc. support Senate Resolution 1809 and believe that the Clean Air Act (CAA) should not be used to force reductions of greenhouse gasses.

We believe the Clean Air Act (CAA) is ill-suited for controlling greenhouse gas emissions, including carbon dioxide, for stationary sources like power plants, and should not be used in such a capacity. Generally speaking, the CAA was enacted to control pollutants on a local and regional scale that cause direct health effects. Congress did not intend it to be used to require reductions or limitations on greenhouse gases blamed for global warming or climate change. Given the design of the CAA and its focus on local and regional pollution, it is poorly designed to address greenhouse gases.

In 2007, the U.S. Supreme Court determined the definition of "pollutant" in the Clean Air Act is so broad that it includes emissions of greenhouse gases, and directed EPA to make a determination as to whether or not emissions of these gases from new automobiles "endangered" public health and welfare, and therefore should be regulated under the existing statute. However, the Court did not impose any deadlines on EPA, nor did it indicate that EPA must regulate greenhouse gases. It also did not address regulating emissions from stationary sources.

EPA has finalized the agency's endangerment finding, which opened the door to using the CAA to regulate GHGs from motor vehicles, and plans to issue a final motor vehicle rule. However, any regulation of GHGs under the mobile source provisions of the existing CAA results in cascading regulatory effects on other programs, including the prevention of significant deterioration ("PSD") and Title V permitting programs, negatively impacting the electric power and other sectors.

For these reasons, we urge the adoption of SR 1809.

LYNN JENKINS, CPA
2ND DISTRICT, KANSAS

ASSISTANT WHIP

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

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# Congress of the United States
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March 2, 2010

Kansas Senate
Committee on Natural Resources
State Capitol, Room 222
Topeka, KS 66612

Dear Senator Huelskamp and Members of the Committee,

I understand the Committee on Natural Resources has introduced Senate Resolution 1809 -- a resolution opposing the United States Environmental Protection Agency's greenhouse gas regulation by rulemaking, and has hosted a series of hearings to discuss recent regulations proposed by the U.S. Environmental Protection Agency (EPA).

In April 2009, the EPA issued a report defining carbon dioxide and five other natural gases as "greenhouse gases" that threaten the public health and contribute to global warming. Through a loophole in the Clean Air Act, this "endangerment finding" gives the EPA authority to regulate the production of these natural gases. Since it was issued, multiple scientific studies have been released that challenge the validity of this finding.

The authority to make laws is reserved for Members of Congress who are elected by and accountable to the people. It is reprehensible for an executive agency to skirt congressional authority in order to implement such radical policies. I am working proactively to thwart the EPA's overreaching agenda and have co-sponsored two important pieces of legislation. The first, H.R. 391, would amend the Clean Air Act to provide that greenhouse gases such as carbon dioxide are not subject to the Act, effectively annulling the EPA's endangerment finding. I also joined 98 of my Republican colleagues in cosponsoring H.J. Res 77, a joint resolution of disapproval of the EPA's endangerment finding.

Protecting and preserving our natural resources and growing our state's economy are not mutually exclusive events. I agree with you wholeheartedly that the numerous natural resources and agricultural goods which Kansan businesses produce "...would be harmed by increased input costs and other economic strains...." The oil and natural gas industry in Kansas is a $6.5 billion per year industry that employs over 28,000 workers, and in 2007 alone the Kansas agriculture industry brought $15.5 billion to our state. With such high stakes, it is imperative we ensure that any regulations enacted by the EPA are just and within its scope.

The hearings held by the Kansas Senate Committee on Natural Resources can bring to light many of the issues at stake and help Members of Congress to understand the potential ramifications of these EPA regulations on Kansas businesses. I welcome the Committee's input and insight from the state level as I work in our nation's capital to protect Kansans from costly and burdensome regulations.

If you or any member of the Committee would like to discuss specific issues or ideas, please feel free to contact my staff member, Megan Taylor, at 202-225-6601.

Sincerely,

Lynn Jenkins

Lynn Jenkins
Member of Congress

TODD TIAHRT
4TH DISTRICT, KANSAS

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE:
LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION
RANKING MEMBER
DEFENSE

# Congress of the United States
## House of Representatives

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March 11, 2010

I'd like to begin by taking the opportunity to thank the Committee for the privilege of submitting testimony on this matter. I'd like to especially thank Sen. Huelskamp for the invitation to address the Committee.

The recent "Climate-gate" scandal has given credence to what I, and many other reasonable voices across the country, have been saying all along—credible climate data is severely lacking, and radical policy and economic changes are premature. On no other issue would a legislative body take such drastic action when even supporters claim that they've altered the evidence and destroyed the original data. Yet Al Gore, Lisa Jackson, Henry Waxman, and others in Washington have expected us to blindly accept their assertions of the dangers of man-made carbon emissions.

Fortunately, the American people are well aware that federal control of carbon emissions is a horrible idea. Thousands of Kansans have contacted my office to tell me of their concerns with the cap and trade bill that passed the House last summer. They are not alone. I agree with them, and voted against the House bill. I have spoken with colleagues who voted for the bill and, when they returned to their districts, faced a very angry constituency.

That message seems to have gotten through to those in the U.S. Senate, because it seems rather unlikely that they will consider similar legislation. The longer they wait to act, the less likely it becomes that any bill will move. This is good news for America.

The White House and the EPA are determined to push through global warming regulations. Due to the supposed lag in legislative action, they have used the courts to bypass Congressional oversight. With the *Massachusetts v. EPA* decision in 2007, the Supreme Court granted the EPA the authority to regulate greenhouse gas emissions under the Clean Air Act. As President Obama and EPA Administrator Lisa Jackson believe that Congress is acting too slowly, they to use this court-endowed authority to implement their own restrictions on greenhouse gas emissions.

It is the responsibility of Congress, not the EPA or any other regulatory agency, to legislate. Bureaucrats too easily get engrossed in their own world of regulatory enforcement, and become completely oblivious to the needs of those who are affected by the regulations themselves.

This is an incredibly disastrous approach. Besides the fact that there is no credible evidence that greenhouse gases cause global warming, the economic impact is severe. The EPA is bound by law to ignore the potential economic impacts of any new regulation they implement. The fact that a cap-and-trade program would increase agriculture production costs by $16 billion annually, eliminating Kansas jobs and restricting markets for our products, carries absolutely no weight in their decision-making process.

I believe that all regulations should go through a simple calculation before being enacted: is B greater than C? In other words, does the benefit of the regulation outweigh the cost? If the benefit outweighs the cost of the regulation—lives are saved, health is improved, business is facilitated—then the regulation is useful and should be considered. But, if the cost of compliance outweighs the benefits of any regulation, then it needs to be altered, or eliminated. If we could put all of our regulations through this simple litmus test, we would see a significant reduction in the cost of doing business. We would also save taxpayer dollars on ever-bloated regulatory agencies.

The city of Rose Hill, Kansas, is a perfect example of EPA's disregard for the cost of arbitrary regulations. They passed a $5.2 million bond issue to upgrade their water treatment facility. Before even a single glass of water had been processed by the new facility, the EPA tightened the allowance on heavy metals from 3 parts per billion to 1.5 parts per billion. This raised the cost of the treatment facility to $8.3 million. That extra expense had to be passed on the residents in the form of a $25 monthly fee for water services, and an equal fee for sewer services. And yet, it is impossible to determine that anyone's health improved, or that any lives were saved by these additional regulations. If the EPA had compared the costs to the benefits of this regulation, the idea would have been scrapped.

Regulatory agencies in Washington are failing in their mission. Instead of understanding the needs of our economy in order to make it safer and more efficient, they operate in a vacuum. They also should be helping people comply with regulations, rather than playing "gotcha," sneaking around in hopes of catching people in violation and assessing fines. Government agencies should be working in cooperation with businesses to help meet each other's goals. Rather than simply imposing fines on anyone who emits too much, the EPA should be working with farmers, ranchers, and businesses to find ways to control their emissions.

There was a car commercial during the Super Bowl this year, amusing in its portrayal of the environment police arresting people who did not recycle, chose plastic over paper bags at the grocery store, or drove cars with poor gas mileage. It may have been entertaining, but it loses its humor when we realize that this is exactly what some bureaucrats in the EPA would like to do.

I have taken steps in Washington to restrict the EPA's ability to regulate greenhouse gas emissions. Last summer, I offered an amendment to the FY 2010 Interior Appropriations bill to prevent them from creating a tax on livestock emissions. The tax was estimated to cost $175 for each dairy cows, $87.50 per head of beef cattle, and $20 or more for each hog. Needless to say, the additional cost associated with such a tax would severely harm farmers and ranchers across the country, and could drive many of them out of business. The amendment was accepted by voice vote, and is now public law.

During the conference committee meeting on the Interior Appropriations bill last October, I proposed an amendment to defund any EPA efforts to regulate greenhouse gas emissions. Unfortunately, it was not accepted. But I will not let that deter me from continuing to fight the

EPA in their efforts to ignore the will of the American people, usurp legislative authority, and restrict our economy.

If any Member of the Committee has additional questions, I would be more than happy to speak with them. Please feel free to call me at 202-225-6216.

Todd Tiahrt

Todd Tiahrt
Member of Congress

KBIA
KANSAS BUILDING INDUSTRY ASSOCIATION, INC.

**STATEMENT OF KANSAS BUILDING INDUSTRY ASSOCIATION**

**TO THE SENATE NATURAL RESOURCES COMMITTEE**

**SENATOR CAROLYN MCGINN, CHAIR**

**REGARDING S.R. 1809**

**MARCH 11, 2010**

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director, of Kansas Building Industry Association (KBIA). KBIA is the trade and professional association of the residential construction industry in Kansas, with approximately 2300 member companies at large and in local home builders associations. KBIA is the Kansas affiliate of the National Association of Homebuilders (NAHB).

NAHB joined a coalition of business and industry groups to challenge the U.S. Environmental Protection Agency's endangerment finding for green house gas emissions.

The association is part of the lawsuit to ensure that the federal government does not regulate greenhouse gases using statutes that Congress enacted long before climate change became a global concern.

The EPA's endangerment finding on greenhouse gases only exacerbates a very real problem, because it will result in a near paralysis of permitting authorities.

The Clean Air Act and other existing environmental statutes are ill-equipped to address global climate change. Expanding an expensive, cumbersome federal permitting process does little to reduce greenhouse gases - but it can and will cost jobs.

While many home builders and developers are not yet directly affected by the endangerment finding, many of their suppliers will be - resulting in higher costs for raw materials and products from manufacturers subject to more stringent regulation.

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For that reason, NAHB joined the National Association of Manufacturers, American Petroleum Institute and other trade associations to challenge the finding.

Other groups also scrambled to meet the Feb. 16 deadline to challenge the finding, including some that question the veracity of climate change. Alabama, Virginia and Texas also filed petitions, citing the regulatory burden on states.

The EPA itself has acknowledged that regulating greenhouse gases through the Clean Air Act is going to lead to burdensome and wholly unworkable permitting requirements. It hasn't the manpower or the budget to deal with the outcome, and neither do the states that will have to implement these regulations.

A better approach would be to provide incentives for green building and energy efficiency efforts. Our members will continue to retrofit older, inefficient homes, which are the biggest source of carbon emissions in the residential sector.

Home builders and remodelers will be able to ramp up this work - and strengthen employment throughout the residential building sector - if the banking and appraisal industries recognize green and energy-efficient features in their valuations and when creative financing options are available to further incentivize home owners to make those improvements.

We believe it's important for the State to join in the call to EPA to rethink this finding and allow the legislative process to address the issue to set the policy direction for the country. Thank you for your consideration of S.R. 1809.

# American Agri-Women

STATEMENT OF AMERICAN AGRI-WOMEN

TO THE SENATE NATURAL RESOURCES COMMITTEE

SENATOR CAROLYN MCGINN, CHAIR

REGARDING S.R. 1809

MARCH 11, 2010

Chairman McGinn and Members of the Committee, I am Chris Wilson, President of American Agri-Women, the national coalition of farm, ranch and agribusiness women. We have 56 state and commodity affiliate organizations, representing over 40,000 women in agriculture nationwide.

AAW supports S.R. 1809 and commends the Committee for consideration of this resolution. We concur that EPA should allow the legislative process to address this issue rather than "legislating" through regulation.

In addition, the finding of endangerment should not stand because it is based on questionable data. AAW has requested that EPA reconsider its endangerment finding in a recent letter to EPA Administrator Lisa Jackson. In the EPA's federal register notice regarding the endangerment finding, EPA said that it had relied most heavily on the data of the United Nations Intergovernmental Panel on Climate Change (IPCC). In light of the recent revelation that the IPCC has manipulated data to prove theories of man-made global warming, and since there is so much disagreement among climatologists regarding whether climate change is really occurring and what is causing it, American Agri-Women believes that the Environmental Protection Agency should step back and further examine all the science on global warming.

As stated by American Farm Bureau, "The United Nations says farmers will need to produce 70 percent more food for an additional 2.3 billion people worldwide by 2050. Our national goal should be focused on enhanced food production, not measures that limit our farms' productive capabilities. The commodities produced by U.S. farmers and ranchers today feed more than 300 million people in the U.S. and millions more around the world. With world population expected to rise from 6.8 billion people today to 9.1 billion people in 2050, the U.S. will be reducing the

number of people it can feed as our agricultural land is pulled out of food production. American agriculture's ability to export food and fiber to countries that need it the most will diminish."

And if the climate is merely "changing," the EPA has a very real chance of taking the wrong action when establishing regulations and in the process costing the United States millions, even billions, of dollars. The increased costs of production incurred by American farmers and ranchers as a result will put them at a competitive disadvantage in international markets with competitors in other countries that do not have similar restrictions, forcing most of our food to be grown elsewhere, where we also have no control over farming methods and pesticide use. This, when citizens around the U.S. are demanding local food!

This finding will have a huge impact on our economy, our environment, and our national security. It is critical that Congress have the opportunity to address this issue with regard to all those impacts, rather than for EPA to make the determination on the basis of "science" that is questionable at best.

Thank you for your consideration of S.R. 1809.

**Senate Natural Resources Committee**
**Testimony on SR 1809**

By Tim Stroda
President-CEO
Kansas Pork Association

March 11, 2010

Kansas pork producers work every day to manage the nutrients produced on our farms as a valuable resource and in a manner that safeguards air and water quality. The pork industry is proud of the reputation its members have earned for initiating innovative environmental improvement programs.

Our operations provide food for the world and a positive economic impact on the state and local economy. Unfortunately, it is estimated that in the last two years, Kansas pork producers have lost about $150 million. To put that in perspective, this is over 75% of the estimated profits producers earned in the 16 years prior to 2008.

Our industry is not in a position to weather additional economic strains. The Environmental Protection Agency's greenhouse gas regulations will increase our members' input costs through compliance with the new rules without any real environmental gain.

The KPA believes the EPA has significantly underestimated the testing, recordkeeping and reporting burden posed by the rule on livestock producers. Furthermore, the recordkeeping and quality assurance plan requirements are overly burdensome and beyond the capabilities of livestock operations without costly third-party support.

The members of the Kansas Pork Association ask for your favorable consideration on Senate Resolution 1809.

*In 2009, Kansas pork producers sold over 3.2 million head of market hogs, feeder pigs and seed stock with a gross market value over $356 million. This year, Kansas pork operations will consume nearly 40 million bushels of grain or grain products.*

**2601 Farm Bureau Road • Manhattan, Kansas 66502 • 785/776-0442 • FAX 785/776-9897**
**e-mail: kpa@kspork.org • www.kspork.org**

KANSAS LIVESTOCK ASSOCIATION

*Since 1894*

**TESTIMONY**

To: Senate Committee on Natural Resources
Senator Carolyn McGinn, Chair

From: Allie Devine, Vice President and General Counsel

Date: March 11, 2010

Re: **Senate Resolution No. 1809**

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

The Kansas Livestock Association supports the intent of SB 1809. We have testified on several occasions before the Senate Natural Resources Committee outlining our concerns with the onslaught of federal regulations and their impacts on the livestock and agricultural sectors.

The National Cattlemen's Beef Association and a coalition of industries have challenged the "endangerment finding" of EPA. The impact of such regulations will be far reaching as virtually every sector of the economy will be affected. We believe that many industries will be forced to meet new source performance standards at substantial cost without assurances that other countries will not continue to exploit resources and gain competitive advantages because they do not share the regulatory burden. We also call upon the Congress to hold hearings on the science behind this determination-Climategate should not go unnoticed and the data unchallenged.

As we have mentioned before, there is a long list of proposals from EPA that will impact Kansas. We support this resolution, but hope that the Legislature and the Governor, on behalf of the industries in Kansas, will also seek to stop or modify the long list of items included in Director John Mitchell's testimony. We ask that the Legislature, KDHE, and the Governor be our advocates for scientifically based cost effective laws and regulations.

Thank you.

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3-11-10
Attachment 16

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KANSAS FARM BUREAU
The Voice of Agriculture

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# *PUBLIC POLICY STATEMENT*

## SENATE COMMITTEE ON NATURAL RESOURCES

## RE: SRR No. 1809 – a resolution opposing the United States Environmental Protection Agency's greenhouse gas regulation by rulemaking.

**March 11, 2010**
**Topeka, Kansas**

**Written testimony provided by:**
**Brad Harrelson**
**State Policy Director**
**KFB Governmental Relations**

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Chairman McGinn, and members of the Senate Committee on Natural Resources, thank you for the opportunity to offer support of SCR 1809. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Kansas Farm Bureau supports SR 1809, which opposes the US Environmental Protection Agency intention to regulate greenhouse gases by rulemaking. We believe EPA's action bypasses the legislative process, and far exceeds the agency's authority under the Clean Air Act. We are especially concerned about the negative impact to Kansas Agriculture if this proposed rulemaking is implemented. The balance of our statement is the message communicated to EPA expressing those concerns.

Kansas Farm Bureau is opposed to several sections of the proposed rule to tailor application of the Prevention of Significant Deterioration (PSD) and Title V programs to the regulation of greenhouse gases (GHG) under the Clean Air Act. While the basic premise of the rule is to mitigate the broad economic and regulatory burdens that will

result from the regulation of greenhouse gases under the Clean Air Act we have significant concerns in the potential impacts of the rule on farms and ranches across the nation.

First, the economic consequences of regulation for farmers and ranchers will be severe. In particular we are apprehensive about the application of Title V permits to the livestock industry. In 2008, the U.S. Department of Agriculture (USDA) filed comments with the Office of Management and Budget on the Advance Notice of Proposed Rulemaking on possible greenhouse gas regulation stating:

"If GHG emissions from agricultural sources are regulated under the Clean Air Act, numerous farming operations that are currently not subject to the costly and time-consuming Title V permitting process would, for the first time, become covered entities. Even very small agricultural operations would meet a 100-tons-per-year emissions threshold. For example, dairy facilities with over 25 cows, beef cattle operations over 50 cattle, swine operations with over 200 hogs, and farms with over 500 acres of corn may need to get a Title V permit. It is neither efficient nor practical to require permitting and reporting of GHG emissions from farms of this size."1

The Kansas economy relies heavily on the livestock industry; the State ranks 6th nationally in beef cow numbers, 3rd nationally in the value of live animals and meat exported to other countries and second nationally in fed cattle marketed.2 The potential facilities that could fall under further regulation due to this rule in Kansas include the current 450 federally permitted CAFO facilities and 1350 state permitted feeding facilities. It is unclear how many of the 1350 state facilities might fall under the thresholds for GHG emissions, but all 450 of the federal facilities would be regulated under the proposed rule.

USDA statistics for 2007 indicate that these thresholds would cover about 99 percent of total dairy production, more than 90 percent of beef production, and more than 95 percent of all hog production in the United States. The resulting Title V fee structure would be significantly felt within the dairy, beef and pork sectors.3

Requirements of the Title V program are exacerbated by the fact that any person can challenge a permit during the 60-day comment period prior to issuance. Given the significant number of entities that would be required to obtain Title V permits if GHG were regulated under the Clean Air Act, the possibility of "citizen suits" has the potential to effectively hamstring large parts of the economy. This could be especially devastating for animal agriculture.

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[1] Letter to Susan E. Dudley, OMB from the Secretaries of Agriculture, Transportation, Commerce and Energy, July 9, 2008

[2] Kansas Agriculture Statistics Service

[3]Section 424 of the FY 2010 Interior-Environment Appropriations Act prohibits the expenditure of funds to promulgate or implement any regulation requiring Title V permits based on biological processes from livestock. Thus, for at least FY 2010, livestock producers will not be required to obtain Title V permits based on emissions from livestock.

Similarly, application of the PSD program will also have adverse economic consequences for agriculture. The PSD program requires the owner of a stationary source emitting more than 250 tons per year of a regulated pollutant to acquire a pre-construction permit in order to modify any facility that would result in any increase of emissions. "Stationary source" is broadly defined not only to include single buildings or facilities, but all buildings under a single owner that may even be located on adjacent property. For agricultural producers, it would apply to all barns, greenhouses, or other facilities that are part of farming or ranching operations.

Secondly, we remain concerned that the rule provides no regulatory certainty for any covered entity even if they emit less than 25,000 tons of a covered pollutant per year. Because the rule is designed as a temporary measure – providing no exemption for sources emitting less than 25,000 tons – the implication becomes not whether regulation will occur, but when. The net result of this uncertain environment will likely stifle business development and expansion by producers who fear the state of affairs may change placing them under regulation and forcing additional expense to comply.

Additionally, because the rule does not affect the application of state law it will not correct inconsistencies that currently exist and will not provide uniform application to polluters across the nation.

In summary, thank you for your consideration, and hope the Committee acts favorable on SR 1809. Thank you.