

**Kansas Department of Wildlife, Parks and Tourism
Commission Meeting Minutes
Thursday, October 16, 2014
Martelli's Restaurant
158 S Santa Fe, Salina, KS**

Approved Subject to
1/8/15 Commission
Pg 10 - as corrected Approval

The October 16, 2014 meeting of the Kansas Wildlife, Parks and Tourism Commission was called to order by Chairman Gerald Lauber at 1:00 p.m. at Martelli's Restaurant, Salina. Chairman Lauber and Commissioners Don Budd, Tom Dill, Randy Doll, Gary Hayzlett, Roger Marshall and Aaron Rider were present.

II. INTRODUCTION OF COMMISSIONERS, STAFF AND GUESTS

The Commissioners and Department staff introduced themselves (Attendance roster - Exhibit A).

III. ADDITIONS AND DELETIONS TO AGENDA ITEMS

*Sheila Kemmis - Mike Mitchener will be presenting Antelope and Elk in place of Matt Peek, No. 2 under General Discussion. Alan Stark will be presenting Park Camping and Utility fees in place of Linda Lanterman, No. 6 under Public Hearing this evening.
Robin Jennison – Under Item IV, Department Report, Dennis Hanson will be presenting ESGR State of Support update instead of Walt Frederick.*

IV. APPROVAL OF THE AUGUST 21, 2014 MEETING MINUTES

Commissioner Gary Hayzlett moved to approve the minutes as presented, Commissioner Tom Dill second. Approved. (Minutes – Exhibit B).

V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

Blaine Parker, Wilson Lake – One question pertaining to last meeting; was anything done at Wilson that we asked about? No walleye or largemouth stocked in Wilson and had report from bass tournament that they had the worst bass fishing in last two to four years. What is the purpose of the blue cat, to feed on certain species or certain food supply? And what is the necessity of duck weed, not handy to pull out of a prop. Only caught five fish in four hours yesterday. How many lakes of 5,000 acres or larger are there in Kansas? Sheila Kemmis – There is a response on Wilson Reservoir walleye fishery on the back table (Exhibit C).

VI. DEPARTMENT REPORT

Employer Support of the Guard and Reserve (ESGR) Statement of Support – Dennis Hanson, area chairman – introduced soldiers with him. ESGR began in 1972 to promote cooperation and

understanding between employers and guard and reserve employees. Have to be sure when deployed to have all shots up to date. Service members have opportunity to recognize their employers. Chief (not signed in) – Reiterate what he said, have community and business status, not just one weekend a month any more. Try to help our communities and volunteer locally. Appreciate your support. Jennison – Before I sign this on behalf of the department, the National Guard is important to us. These folks may be called up at any point. It is a great honor to sign this on behalf of the department. The statement says “The Statement of Support Program is the cornerstone of ESGR’s effort to gain and maintain employer support for the Guard and Reserve. The intent of the program is to increase employer support by encouraging employers to act as advocates for employee participation in the military. Supportive employers are critical to maintaining the strength and readiness of the nation’s Guard and Reserve units. Here is what the certificate says: “We fully recognize, honor and enforce the Uniformed Services Employment and Reemployment Rights Act (USERRA). We will provide our managers and supervisors with the tools they need to effectively manage those employees who serve in the Guard and Reserve. We appreciate the values, leadership and unique skills service members bring to the workforce and will encourage opportunities to employ Guardsmen, Reservists, and Veterans. We will continually recognize and support our country’s Service members and their families in peace, in crisis, and in war.”

A. Secretary’s Remarks

1. Agency and State Fiscal Status – Robin Jennison, Secretary, presented this update to the Commission (Exhibit D). The Park Fee Fund (PFF) continues to be really good news and I have highlighted pertinent parts of that. When we send in budget request we graph this; been 10 percent over projections, what is important is we are able to budget needed things, this year replaced some vehicles. Cabin Fee Fund (CFF), highlighted year-to-date, which is behind previous year; need to see what parks that is in, should be able to have report at next meeting. The last one is the Wildlife Fee Fund (WFF), a decrease from last year of \$3 million, down because of drought, but it looks like it is returning to normal.

2. 2015 Legislative Update – Chris Tymeson, chief legal counsel, presented this update to the Commission. Still a few months out, but we are working on the budget right now. Beginning a new two-year cycle, don’t expect many changes in the House members and Senate is not up reelection at this time. Keeping track of issues through the year, will tweak a regulation on inherent authority of prosecutor to charge; also looking at alternative licenses other than paper, like phone or credit card you can swipe. Looking at two pieces of property in southeast Kansas and using Natural Resource Damage Assessment (NRDA) funding from strip mining, thinking of trying to exempt these from statutory requirements. Boater education date (born after), like hunter education, may come back. Got state fossil last year, may get state fish this year. Enhanced penalties for wildlife violators a couple of years ago on valuing animals, see if legislature would be willing to go back and revise so quickly. HSUS wants to add monkeys and wolves under dangerous regulated animals act. Chairman Lauber – What about primates? Tymeson – Non-human primates, also looking at wolves, started in 2005 or 2006 when tiger killed a girl getting her senior pictures.

B. General Discussion

1. Tourism Update – Linda Craghead, Asst. Secretary, presented this update to the Commission. Wrapped up 2014 tourism conference with around 200 in attendance in Manhattan last night. Did give Governor’s Award to Country Stampede. Previewed economic impact report being conducted by East Coast company; looking positive. Had very successful opening at Sand Hills State Park; Ryan is here today. Busy couple of weeks and some more coming up. Volunteer Conference in Lawrence October 21 and October 22, looking at state parks. Conducting meetings along Flint Hills and Kansas River nature trails. On Friday next week hosting media event at Horsethief Reservoir, not one of our lakes, but a partner; to discuss hunting and forecast for waterfowl, pheasants and turkey. Chairman Lauber – Never found dissatisfied customer who has stayed in the cabins, may be economy or weather, just a trend. Craghead – In CFF, you can reserve cabins a year in advance, cash is realized at time of sale, not time of stay. There are always opportunities to enhance programs. Commissioner Dill – Are most of the cabins filled or full? Craghead – Have not had opportunity to look at each week, busy every weekend but open on the weekdays. Commissioner Rider – Hard to get a weekend booked, but encourage everyone to stay in one. Jennison – See opportunity, tourism conference on Tuesday, asked how many here for first time and there were about 50 people new; we had a study done in 1990s, biggest problem was perception of ourselves and this department has really gotten those opportunities out in front of people. Lot of progress made in last four years.

2. Antelope and Elk 25-Series Regulations – Mike Mitchener, wildlife section chief, presented this report to the Commission (Exhibit E). Here to talk about 115-25-7, antelope season. Western Kansas pronghorn antelope populations have supported a hunting season since 1974. The firearm pronghorn season has been four days long since 1990 and archery pronghorn season was nine days long from 1985 to 2004, also included the two weekends prior to the firearm season. Since 2005, the archery season has reopened on the Saturday following the firearm season and continued through the end of October. A muzzleloader season was initiated in 2001. It has begun immediately after the archery season and ran for eight days, the last four of which overlap with the firearm season. With the exception of annual adjustments in permit allocations, this regulation has basically been unchanged since 2006. The archery season doesn’t conclude until the end of October, and it will take some time to collect and analyze this year’s harvest data, but we don’t anticipate any changes to season structure, bag limits, unit boundaries or permit types at this time.

Elk is 115-25-8; hunting on and around Fort Riley was initiated in 1990, and most of the hunting opportunity in the state occurs on the Fort. However, elk do exist on private lands, though unpredictably in most of the state, with most in southwest part of state. Elk also occur in the vicinity of Cimarron National Grasslands, but these elk are primarily found in neighboring states, and the Grasslands haven’t been open to elk hunting since 1995, following several years of heavy harvest pressure. Since 1999, longer seasons and less restrictive permitting options have been authorized except near Fort Riley and the Grasslands. This framework is intended to allow for elk that may be causing crop damage or other conflicts on private land to be harvested, and for landowners to have the opportunity to maintain elk at desirable numbers on their own property while at the same time allowing the Fort Riley and Cimarron herds to be maintained. This regulation has basically been unchanged since 2011. The current season is ongoing and issues could arise, but at this time we do not anticipate any changes to season structure, bag limits, unit boundaries or permit types. Chairman Lauber – We have three elk units and allow

hunting only in Unit 2 by draw; Unit 3 is over-the-counter; except hunt-your-own-land?
Mitchener – Yes. Commissioner Budd – Want to figure out how to get one of these tags.
Mitchener – In Unit 3, they are over-the-counter.

3. Big Game Permanent Regulations – Lloyd Fox, wildlife biologist, presented this report to the Commission (Exhibit F). Six permanent regulations dealing with deer; KAR 115-4-2, 4-4, 4-6, 4-11, 4-13 and 4-15 and no action is proposed by the department on these regulations this year. Always ask for public input at this time of the year. Had changes in 4-4 in 2014 season. Commissioner Budd – Anything we haven't addressed? Fox – No requests have been made to the department for changes. We open these up each October and bring one or more back only if something needs to be done. They will remain as they are unless we change them. Commissioner Dill – Looked at use of private drones for taking of game? Fox – Discussed with law enforcement and it is already prohibited. Commissioner Rider – Is drawing in April, why so early, didn't it used to be later? Fox – Application period was in May, resident is still in July. Came from request from public to be able to know if they got a permit or not so they could check other states to hunt in. Blaine Parker – Possibility of buck tag, if don't get in first season, possible to get after first of year with that tag; if not, why not? Fox – When we issue deer permits these are opportunities to hunt, not necessarily to remove a deer from the heard. Factoring in season lengths and factor in success rate of about 50 percent; not issuing a 1,000 permits to allow 1,000 deer to be taken, supposing, under regular circumstances, harvest of around 450 to 500 deer. This deals more with the next regulation, 115-25-9. Looking for ways to back off on harvest, have been trying to bring numbers down to socially acceptable numbers, but we have reached that and looking at decreasing number of permits. Parker – Possibly consider for residents in the future. Fox – Expect to be going out for public meetings. Commissioner Rider – Do you have break down of population, people ask for that all of the time. Fox – Have estimates of deer by deer management units; we have indices we use, landowner opinions, hunter success, etc. to come up with those numbers. Peoples desires have not changed since 1965, some want none at all, some say not enough. We will bring back again in case something pops up, but no recommendations at this time.

4. Deer 25-Series Regulations – Lloyd Fox, wildlife biologist, presented this report to the Commission (Exhibit G). KAR 115-25-9 covers items statewide as well as seasons at two military areas, whereas 115-25-9a covers deer seasons at Fort Riley and has typically been used to address deer issues which developed during the legislative session. KAR 115-25-9a is reviewed through the same department and Commission review process starting in January and generally being completed in June. KAR 115-25-9 is an exempt regulation which must be reviewed and passed each year to establish the deer hunting season dates for the following year. We will vote on these at March meeting. Want to leave seasons as they were last year. Pre-rut two-day season will run out at the end of this year, have questions on harvest survey we will be sending out to 20,000 people, with a chance to eliminate or change that season. Not a popular season at this time. Corrections from briefing book, typo on Fort Leavenworth, last days should be December 19 to December 20, 2015. Since publishing on briefing book got additional information from Smokey Hill, start November 26 and run through November 29 and December 12 and 13. Looking at units where we might be cutting back on permit numbers or shorter antlerless season. By design bringing deer herd down, now looking at allowing the herd to grow back, has been stable or declining for years. Chairman Lauber – Pre-rut season, any political

benefit to keeping that open, not necessary, but no harvest impact? Fox – Was a social issue, not much research done on this; public acceptance has been very low, asked to look at this for two years and it is back in our court, whether we keep it, keep in some areas, or go to some other season. Chairman Lauber – Survey should show some information to decide on that. If you want to reduce numbers, eliminating extended season is better than number of permits we allow to take. Only half of hunters purchase a permit to take an additional antlerless deer. Number of permits has less effect than number of days. Chairman Lauber – Encouraging nonresidents to purchase doe tags have any effect? Fox – Came in last year with combo deer permit, required nonresidents to purchase antlerless permit at resident price and that did increase in deer harvest between 2012 and 2013; about 20,000 whitetail antlerless permits, don't take deer at as high of rate as residents. Chairman Lauber – One of better ways to allow the herd to rebuild. Fox – Reason we chose the nonresidents was because of leasing and adjacent landowners were complaining of abundance of deer coming on their land; encouraged them to take deer on those properties being leased. Chairman Lauber – Have you done any population spotlight surveys yet? Fox – Yes one in Region 2 the night before and one coming up in Region 1; seeing lots of fawns out there. Commissioner Budd – The pre-rut season, will you report to legislators who mandated that season? Fox – If they require it, but not unless they request it. Chris can provide that information to key individuals. Commissioner Budd – This starts with constituents going to their legislators.

Chairman Lauber introduced Mike Mitchener. Mitchener – After 37 years of service and 26 of those years as fish and wildlife division director Joe Kramer is going to retire – we brought some cookies. Congratulate Joe on his pending retirement.

Break

C. Workshop Session

1. KAR 115-7-2. Fishing; general provisions – Bryan Sowards, Fisheries Section, presented this report to the Commission (Exhibit H). Currently 115-7-2 states that anglers must have their name and address attached to trotlines, setlines, tip-ups, floatlines, and unattended fishing lines. Staff recommends that we amend to have the option of either putting their KDWPT number on the tag or their name and address; like we do with traps. Chairman Lauber – It makes a lot of sense.

2. KAR 115-30-1. Display of identification number and decal – Kevin Jones, Law Enforcement division director, presented this update to the Commission (Exhibit I). A request was made to address the problem of displaying registration decals on sailboards. Because the surface of the board is rough textured, allowing the operator to stand on the board without slipping, decals usually do not adhere to the board. The current regulation does require that, at minimum, the registration decal must be attached to the front half of the top of the sailboard. In order to address the problem of the decals not adhering properly, the recommendation is being made that in lieu of displaying the decal on the board, the operator may carry the registration decal on their person, like in a zip lock bag or something they can carry, while operating the sailboard. This allowance is currently being granted to operators of sailboards, but this change would establish in regulation that this allowance will be made. Because similar problems are

seen with kiteboards, the recommendation is being made to include them, as well to be proactive. officer.

3. KAR 115-9-6. Vehicle permits; display – Alan Stark, Parks Division supervisor, presented this update to the Commission (Exhibit J). Regulation 115-9-6, display of vehicle permits. This amendment would delete the reference to second vehicle permits which was removed in 2012, and include direction that Park Passports shall be permanently affixed to the outside of the windshield on the lower corner of the driver's side of the vehicle. Because of the material of the passport permits issued by the Department of Motor Vehicles, they must be permanently affixed to the outside of the vehicle windshield. This proposal brings this regulation in line with the state park motor vehicle permits available to the public. Park tag in two instances was scraped up in ice, and we issued a duplicate. Chairman Lauber – What is the fee for a duplicate? Stark - \$10.50, duplicates have to come from us not the Tag Office.

Chairman Lauber – Have Bob Roberts describe the issue and problem as you see it. Bob Roberts – Last year this came up regarding Milford Reservoir and it was brought up to me about Glen Elder. That is the right to fish around private docks and docks around the Marina. Last year they posted a sign that said it was a private cove. Tymeson – Not a new issue, we have discussed this in the past. Roberts – What are the rights of an angler in or around docks? Are all contracts the same with Marina's? Tymeson – Many of the contracts are not crystal clear on restricting traffic or have definite boundaries; these were done before Amy and I came on board. Looked at Milford contract on the way over here, doesn't say they can restrict, but a case-by-case basis. Chairman Lauber – Not all leases are with us either. Tymeson – Some with us, but with Corps approval too. Chairman Lauber – Tendency of Marina operator to extend his yard and boundary, expect every lease is different. How do you define premises? One definition is physical personal property and slip which is open rentable area. Don't expect everyone to go around making citizens arrests. What does the angler do, consult with ranger or park manager? Tymeson – That would be my recommendation, we discourage confrontation. Chairman Lauber – Someone will have to make decision on Milford at some point. Roberts – Some anglers at Milford were threatened, no conservation officer (CO) was called, but friends of his had one called on him; a waste of manpower hours when CO has to come down and tell them it is okay to fish there. Chairman Lauber – Familiar with this, want to encourage Marina operators, but they are protective of their turf. Roberts – These guys do have an investment and these anglers are not interested in going on the dock, but want to crappie fish under the dock, is that still public water? Some signs say no fishing within 50 feet, do they have the right to post something that is not true? Commissioner Budd – On a case-by-case basis. Roberts - I have had one confrontation with a Marina operator at Glen Elder. Chairman Lauber – There is a specific case that is ongoing. Roberts – Clarify rights of Marina operator in marina area. Chairman Lauber – Don't think there is a standard, have to be done on each body of water. He controls access of docks and his improvements. Roberts – Why can't you standardize that? Chairman Lauber – Lease may be in effect for 25 years or so, so can't change it now. Commissioner Budd – Are you dealing with friend's issue at Milford? Tymeson – Lease is not clear, I believe you can't fish under those docks or in a slip. Chairman Lauber – Water inside the slip can be construed as his. Roberts – How is angler supposed to know? Commissioner Budd – Kevin, what are your guys going to do if they catch someone there? Jones – Look at boundary line, look at public water in streams, if dock area is reserved to Marina owner, it is under his control, access and use within the boundary

is given to that individual; from edge of slip inward would be in control of Marina operator, outside that would be public water. Commissioner Budd – You have interpretation from legal staff and head of law enforcement; not better to be right, but comply. Roberts – Is there a general rule you can follow; define what marina operator has control over? Tymeson – Many of these leases predate me and I have been here 15 years. My opinion is not making you happy or marina operator either. This issue has come up four or five times in different locations. Want us to solve an issue that is fairly infrequent and I am telling you what we can do in this scenario. Commissioner Budd – Can you bring back a list of how many leases there are with Marina operators? Tymeson – I don't have that information, I imagine Linda has park information, but we have no information from Corps. Chairman Lauber – Need to deal with this on case-by-case basis. Talk to conservation officer and have him help deal with it and we will try to respond rather than a rule of thumb that would be subject to different interpretations. Commissioner Budd – We may have a lot of contracts that have a long time before expiring. Chairman Lauber - Don't think Commission can take any action on this. At this point, make contact to defuse this situation. Roberts – Advise marina operators to not post 50 foot barrier when it is not true. What does angler do? Commissioner Rider – Can we post in regulations/brochures for each lake? You want us to put up a sign or what? Chairman Lauber – Do on a case-by-case basis and contact the marina operator. Don't want rules and regulations that are not consistent; decide at later date if it becomes more prevalent. Roberts – Seasonal problem that comes up in fall or early spring. Seems like minor problem, but some marina operators can get pretty nasty.

Commissioner Marshall – Received call about wearing orange during dove season. Good idea or not? Tymeson – Required for elk and deer hunters, not for antelope or upland bird hunters but is recommended. Have not required blaze orange, in some scenarios. I have been involved in some International hunter education council discussions on whether species can see the orange or not. Most accidents are due to swinging on game, six last year. Muzzleloader is required during muzzleloader season. Commissioner Rider – One gentleman was muzzleloader hunting and other people were dove hunting on same public area, he was wearing blaze orange and he did not see them because they were not. Tymeson – Have several overlapping seasons, important to know what lies beyond your target.

VII. RECESS AT 3:05 p.m.

VIII. RECONVENE AT 6:30 p.m.

IX. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS

XI. DEPARTMENT REPORT

X. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS

None

XI. DEPARTMENT REPORT

Chairman Lauber - Joe Kramer is retiring in five weeks; thanked him for his service and

welcomed him back in to visit sometime.

D. Public Hearing

Notice and Submission Forms; Kansas Legislative Research Letter and Attorney General Letter (Exhibit K).

1. KAR 115-18-21. This regulation shall be revoked on and after January 1, 2015 – floatline fishing. – Bryan Sowards, Fisheries Section, presented this report to the Commission (Exhibit L). Revoke 115-18-21 that requires floatline fishing permit, a no cost permit that was added to six trial locations so we could survey permittees to determine what impact they might be having on the resource; we had expanded to 12 lakes and no longer see a need to survey the floatline users so would like to remove the requirement to possess a permit. There are still certain waters you can use a floatline on, but no permit will be required.

Commissioner Gary Hayzlett moved to approve KAR 115-18-21 before the Commission. Commissioner Tom Dill second.

The roll call vote on KAR 115-18-21 to revoke was as follows (Exhibit M):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	Yes
Commissioner Lauber	Yes

The motion as presented on KAR 115-18-21 passed 7-0.

2. KAR 115-2-1. Amount of fees – floatline fishing – Bryan Sowards, Fisheries Section, presented this report to the Commission (Exhibit N). Since we have revoked 115-18-21, the floatline fishing permit, we need to delete the cost reference from this regulation. Michael Pearce – Is only change to the floatline permit fee? Tymeson – Yes.

Commissioner Tom Dill moved to approve KAR 115-2-1 before the Commission. Commissioner Roger Marshall second.

The roll call vote on KAR 115-2-1 as recommended was as follows (Exhibit O):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	Yes
Commissioner Lauber	Yes

The motion as presented on KAR 115-2-1 passed 7-0.

3. KAR 115-7-3. Fish; taking and use of baitfish or minnows – Bryan Sowards, Fisheries Section, presented this report to the Commission (Exhibit P). Have been asked to change cast net, from 3/8- to 1/2-inch mesh; still have to release sport fish.

Commissioner Roger Marshall moved to approve KAR 115-7-3 before the Commission. Commissioner Tom Dill second.

The roll call vote on KAR 115-7-3 as recommended was as follows (Exhibit Q):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	Yes
Commissioner Lauber	Yes

The motion as presented on KAR 115-7-3 passed 7-0.

4. KAR 115-25-14. Fishing; creel limit, size limit, possession limit, and open season – Bryan Sowards, Fisheries Section, presented this report to the Commission (Exhibit R). Changes include a new trout stocking location: Father Padilla Pond at Herington will be added to the list of Type 2 waters, which means you need the permit if fishing for trout. Glen Elder and Lovewell, add 35-inch minimum length limit on blue catfish, it takes eight years to reach sexual maturity so after natural reproduction will be more liberal. Coffey County Lake, managers of Wolf Creek want to change to five-day creel limit on blue catfish. These changes are on the reference document.

Commissioner Don Budd moved to approve KAR 115-25-14 before the Commission. Commissioner Gary Hayzlett second.

The roll call vote on KAR 115-25-14 as recommended was as follows (Exhibit S):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	Yes
Commissioner Lauber	Yes

The motion as presented on KAR 115-25-14 passed 7-0.

5. KAR 115-7-10. Fishing; special provisions – Bryan Sowards, Fisheries Section, presented this report to the Commission (Exhibit T). Updated Kansas designated aquatic nuisance waters table reference document as of July 24, 2014; added Arkansas River from

Lincoln Street dam to Oklahoma state line for white perch; Clinton and Glen Elder reservoirs and Lake Shawnee and Lake Wabaunsee for zebra mussels.

Commissioner Randy Doll moved to approve KAR 115-7-10 before the Commission. Commissioner Tom Dill second.

The roll call vote on KAR 115-7-10 as recommended was as follows (Exhibit U):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	Yes
Commissioner Lauber	Yes

The motion as presented on KAR 115-7-10 passed 7-0.

6. KAR 115-2-3. Camping, utility, and other fees – ~~Linda Lanterman, Parks Division director~~ **Alan Stark, Regional Supervisor**, presented this update to the Commission (Exhibit V). In anticipation of the completion of Sand Hills State Park, we have only 64 campground sites and we are looking at the higher rate which would be the same as El Dorado, Milford, and Tuttle Creek State Parks; would need annual camping permit, plus \$332 **\$311.50** for one utility, \$392 **\$371.50** for two, and \$432 **\$431.50** for three.

Commissioner Gary Hayzlett moved to approve KAR 115-2-3 before the Commission. Commissioner Tom Dill second.

The roll call vote on KAR 115-2-3 as recommended was as follows (Exhibit W):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	Yes
Commissioner Lauber	Yes

The motion as presented on KAR 115-2-3 passed 7-0.

7. KAR 115-15-1. Threatened and endangered species; general provisions – Ed Miller, wildlife biologist, presented this report to the Commission (Exhibit X). Recap, started April 2013 and began five-year review and asked for petitions; July 2013 T&E task committee looked over petitions; September 2013, met and decided which warranted review; January 2014 I presented at Commission meeting and further review by professionals; March showed ten species; April held meetings and workshopped in Wichita at Commission meeting; recommendations in May; updated Secretary in June, published and started 90-day comment period; updated in August meeting; and now here at public hearing. My part was to look at biology and science to delist

species; ten we looked at, a couple birds no longer viable and asked to come off the list, one salamander no longer in Kansas; two fish moved from threatened to SINC, three herpes, enough evidence to move from threatened to SINC; redbelly snake recommended stay at threatened. One other one, we recommended adding the Northern long-eared bat as SINC, USFWS is making an announcement in April whether threatened or endangered. Six scientists on task committee (Bill Busby, Kansas Biological Survey; Mark Eberle, Fort Hays State University; Elmer Finck, Fort Hays State University (who is here today); David Haukos, Kansas State University; Jason Goeckler, KDWP; and Dan Mulhern, USFWS). T&E task committee right on in the science, looked at a lot of studies and did not see enough evidence to move redbelly snake from threatened to SINC, did recommend moving smooth earth snake to SINC. Science is not a debatable point, on keeping redbelly snake threatened; purview of committee is not to look at any other factors than the science that is up to the Secretary. Could be pending or future actions, not far from threshold of SINC species, however that discretion is up to the Secretary. Back in 1996, our Nongame and Endangered Species Act went under reform, one part says the Secretary shall make determination by best scientific, commercial and other data available (socio-economic data, which some people may call political). The Secretary shall take into considerations about to be carried out by other entities; so there can be other factors that can be brought into play. There are some nomenclature changes also.

Chairman Lauber – Voting on list as presented by Secretary Jennison which follows T&E task committee recommendation except for redbelly snake. A vote in favor moves redbelly snake from threatened to SINC. Jennison – Handouts - refresher, my comments at Pittsburg and congress testimony on prairie chickens that is applicable to this (Exhibit Y). Redbelly was listed before 1997, but adapted plan to cover socio-economic factors. Not saying snake is not deserving of concern. Received many comments pro and con. My response is based in politics, but not expediency, but for social growth. Appreciate Ed and the work the task force has done.

Everybody in this room has concern for conservation resources. In reading press that has been written, Facebook posts; but legislature has not been without some merit, heard from their constituents and local units of government. Talked about legislation in Pittsburg that would have gotten rid of Nongame and Endangered Species Act and would have put Chris and the rest of our team at a disadvantage where we needed regulatory authority. Not just to keep them from listing redbelly snake, look at how we best address this without getting so far out in front of society that affects how this agency does its job. Commissioner Doll – Voting on 115-15-1 and everything that has the line through it means it is going to be delisted? Tymeson – Delisted or downlisted.

Commissioner Doll – Do we vote on all of it or split it out? Tymeson – All together, but can make an amendment. Commissioner Budd – This is five-year review so five years before we do this again? Tymeson – Not necessarily, can review in between if petitioned. Commissioner Budd – How was that bill brought up? Jennison – Look at how we were handling T&E. Tymeson – First year, only list federally listed species and last year only two species by name and also there was a bill to repeal the act. The legislature has been involved. Commissioner Marshall – I would like to move forward with the rest and make amendment to remove redbelly snake from this issue. Tymeson – Discuss first then make amendment. Sorensen – Need motion first.

Commissioner Marshall – Make motion to approve, Tom Dill second. Commissioner Marshall – Propose amendment to go forth except redbelly snake. Tymeson – Adopt motion without redbelly snake then make another regulation on only the redbelly snake? Not sure we can do that procedurally. Chairman Lauber – No issues on anything except redbelly snake (asked audience). *Discussion on parliamentary procedure.* Chairman Lauber –

Get down to yes we are going to support recommendation or vote down recommendation.

Commissioner Marshall – I withdraw to motion and amendment, Commissioner Dill second to withdraw. Commissioner Doll – What other legislation would we move on? Tymeson – We have 115-15-1, motion, discussion and vote; and then 115-15-2. Commissioner Budd – Two outcomes, T&E task force recommendation to keep as threatened, or Secretary’s recommendation to delist to SINC. Chairman Lauber – Discussion on procedure. Chairman Lauber – Give everyone a chance to speak, try to keep it from being repetitive.

Tim Fobes – Environmental consultant, represent Johnson County wastewater and City of Olathe, (provided comments beforehand - Exhibit Z). Comments on science, my experience in surveying amphibians and reptiles, this snake and critical habitat, conservation and mitigation. When I put petition together I looked at data and map is a summary of where the species was before 1979 and where it is today. The distribution map shows we have recorded more known sites of redbelly snake; may be places it no longer exists. Places where critical habitat is and no records of snakes in Johnson County. Latest science is old growth oak hickory forest species. Comments from Travis Taggart, said snake could be found; common in Missouri. Experts say northeast Kansas critical habitat loss is why species is disappearing. Don’t know how much habitat loss and what baseline is. There are 1.1 million acres of oak hickory forest, no data county by county, but seven critical habitat counties. Could there be more populations out there? It is possible, heard they are secretive; email provided in May 2014, copied on Travis Taggart’s email, he was an Ad Hoc advisor to the committee and he support delisting. Taggart says more secretive not rare. One of things I noticed in reviewing research is they use different methods of trapping, cover boards; pros and cons to doing that; to start answering the questions of rarity versus secretiveness; maybe need alternative research methods. Critical habitat and mitigation is crux of the matter for permittees; when it impacts oak hickory forest, don’t know if species is there or not, don’t allow presence or absence surveys before going forward on mitigation; sometimes pay upwards of \$1 million for something that may or may not be there. We support Secretary’s recommendation to move to SINC. Commissioner Budd – You did work for MO Dept of Conservation, map is on eastern line of Kansas, is it endangered in Missouri? Fobes – No, more forest in Missouri. Michael Pearce – No records of redbelly snakes in Johnson County? Fobes – Not based on information available to us. Commissioner Marshall – Are 1.1 million acres privately owned? Fobes – I can’t tell you, land is 95 percent privately owned in Kansas. How many in Missouri? Fobes – In capturing not high relative abundance, research shows most common species over five year period. No way to know how many for sure, like deer. A way to look at things when can’t count them. Over five year period I caught 100 over three different counties in Missouri. Commissioner Dill – Better way to do this survey? Fobes – Grift traps, etc. Commissioner Dill – Will we continue requirements for mitigation and further development? Chairman Lauber – From scientific standpoint, it is abundant and not threatened with exception to Kansas. Miller – NatureServe.org has rankings for the redbelly snake which includes a global ranking plus a state ranking for each state in the U.S. The global ranking is G5 (which means it is "Secure" rangewide). The state ranking for Kansas is S2 (which translates to "Imperiled" in Kansas).

Fobes – My company is representing Johnson County wastewater.

Felix Revello, representing KS Sierra Club, from Larned (Exhibits AA, BB) – Opposition to delisting redbelly snake. Habitat needs, learned from Kansas Biological Survey, apologize for inaccuracies I might state. In Kansas, not Missouri, if it is threatened or endangered than we are to offer high degree of protection. Snakes in old growth oak hickory forests, some indication

they also may inhabit wetlands and mature second growth forests. These biologists tell us it is the destruction of these forests that is depressing populations of redbelly to threatened status. Kansas Forest Service says total of high ecological value being converted to crops and urban use. Old growth oak hickory are high value forests. Redbelly forests also provide habitat for other species that we value. We share Secretary's concerns about repealing nongame threatened and endangered species act, do not bend to political species. Appreciate Secretary Jennison's commitment to having a recovery plan developed, but no guarantee it is going to be implemented; will there be money for it, risky enterprise, could have devastating loss of habitat before anything is done. Defer delisting until T&E committee tells us it should be changed. Do no harm; be conservative in your decisions; that is what we are asking you to do tonight. Educate the public to protect habitats, according to survey conducted for the department, 91 percent wanted to protect critical habitat. Let's not concede ground species by species, let's go down fighting.

Elaine Giessel, Overland Park – chair KS Sierra Club – A marine biologist and environmentalist, (read from handout – Exhibit CC). Urge you to amend 115-15-1 to keep redbelly snake on threatened list.

George Potts, retired professor from Friends University – In newspaper article on mitigation costs for sewer line and water line; how is cost determined? Jason Luginbill – Mitigation costs based on a formula, quality and quantity and converted to habitat unit. Potts – As you put in a sewage line you put in the line and fill it back up, how quickly will that habitat return? Luginbill – No net loss formula, look at how long to regrow forests, etc. Potts – Who does money go to? Luginbill – Several different places. Potts – Possible to do minimum amount, doesn't seem terribly high. Luginbill – Start out avoidance of minimum threat, in some instances not possible and go to mitigation process. Commissioner Budd – Who does check go to from developer? Luginbill – Sunflower Land Trust, who bid on this job. Potts – Why would Johnson County be the problem whether it is there or not? Luginbill – In charge of protecting the species, dealing with biology and ecology, habitat is able to be managed, not species. Look at impacts of landscape. Best thing we can do is include lag time and work through that process. Potts – In agreement it is secretive snake. Commissioner Doll – You were at Friends University? Potts – Yes, retired.

Duane Schrag – Wildlife and Parks' own surveys shows overwhelming support to protect threatened and endangered species; fact that legislators wanted to do away it is far cry from evidence you are getting out in front of the public. Ask Secretary to provide convincing evidence that species should be protected or not.

David Norlin, Salina – The Resilience Group – Looking at makeup of Commission, connection to most of you. On planning commission here in Salina. Realize you are in position of listening to paid staff and need to listen to the public. Other creatures will be affected by that, instrumental for environmental studies at Wesleyan, no accurate term, should be called ecosphere. Humans have killed off half of the animals in the world. Mention mitigation costs, some few thousands out of several thousands and millions of dollars. Developers can afford to do that mitigation. You are citizens closest to the people; save it and you will save us.

Susan Pikarek, Johnson County wastewater (Exhibit DD) – Support Secretary Jennison's recommendation to move redbelly snake to SINC list. Additional research is needed to find range of this species; this will help develop recovery plans. Moving to SINC would provide relief for next five years to do further research on this species. I am a steward of public dollars, supportive of balance and support additional study and recovery plan.

Michael Pearce – Ed, what is your title? Miller – Threatened and Endangered species program coordinator. Pearce – Map shows habitat for that? Miller – But, no map comparing oak hickory to other mature forests. Pearce – How much mitigation spent on this species? Luginbill – I have that information, but not with me. Pearce – Commissioner Rider, have you heard from people in your area? Commissioner Rider – Not in my area. Pearce – Commissioner Budd? Commissioner Budd – No.

Emily Wicoff, WaterOne (Exhibit EE) – Here to support Secretary Jennison’s recommendation. Heard comment of overwhelming amount of Kansans supporting protecting T&E species. We are actively participating in conservation, appreciate concern and passion to protect species. WaterOne is a public entity and steward of funds, customer’s money being spent on mitigation. For example, got permit, paid money, no snakes seen, did fee option so somewhere habitat is going to be created; there is no transplant program, but understand recovery plan in the works. Concur with Tim’s recommendations and support moving redbelly snake to SINC. Chairman Lauber – What was fee you paid? Wicoff – We paid per habitat unit \$3,295 and approximately \$142,000. There is a lengthy formula to calculate that, went up from \$1,000 to \$3,000 in last few years. Chairman Lauber – Paid on what kind of project? Wicoff – Water main, 13 miles. Entire project is about \$18 million. We are water utility company in eastern Kansas.

Michelle Wirth, City of Olathe (Exhibit FF) – Here to talk about five-year review plan and experiences we have had. Echo what my partners have said. We believe critical to preserve wildlife habitat. With water and sewer lines we also protect health, safety and welfare of our citizens and are stewards of our funds. We are data driven, support needs and we want to respond positively when citizens ask why mitigating and are we making an impact we want to be able to respond. Hard for us to come up with data driven projects. We want process to remain here, not at state legislature level. We want to work hand-in-hand with you to make the right decisions and move forward. Give us the five years to get the plan in place to work together with the state to come up with resource. We support Secretary Jennison’s recommendation to move redbelly snake to SINC. Commissioner Marshall – How much has your city spent? Wirth - \$50,000 to \$60,000; but need measurable impact.

Curt Cusack, Salina – Teacher of biology at Wesleyan; also on planning commission here in Salina. Nobody said your job would be easy; you need to look at what your responsibility is. I also work with younger kids to show them habitat. People will understand the decision you make today if you keep it protected and depend on the scientists. You have heard from the scientists on the committee; it is your responsibility to protect these species. Go to your mission statement, that is where your principles are (read it – “Fish, wildlife, and outdoor recreation are important to the quality of life for all Kansans and to the Kansas economy. As the public steward of the state’s natural resources, the mission of the Kansas Department of Wildlife, Parks and Tourism (KDWPT) is to: Conserve and enhance the state’s natural heritage, its wildlife and its habitats so future generations have the benefits of the state’s diverse living resources; Provide opportunities to use and appreciate the state’s natural resources consistent with the conservation of those resources; and Inform the public about Kansas’ natural resources to promote understanding and support for the agency’s mission. The purpose of KDWPT’s social media sites (Facebook, Twitter, Flickr, etc.) is to inform and educate the public and encourage discussion concerning the agency’s mission.”).

Break

Commissioner Doll – Vote would be easier if no split opinion in department. Seven scientists say it should remain threatened. Mr. Secretary, this was presented to you and you override it, why? Jennison – Since 1997, when legislature passed an amendment that said based on scientific and socio-economic; scientists don't look at socio-economic and I did look at those for that area. Chairman Lauber – Ask Don, you are from that area; do you have gut feeling of appropriate direction on this? Commissioner Budd – Glaring when I saw the map, reason we are not seeing other entities is it is only in eastern Kansas (JO, WY, DG and LV counties). I have heard discussions and they say this is a shy snake and not even seen in areas where it is supposed to be prevalent. Habitat is great in eastern Kansas, never seen one, but great habitat. If economic impact and other entities were statewide this town wouldn't have enough room to hold all the people. It impacts all of us living in that jurisdiction through rate hikes. The costs and time delays during a recent project for line built through Johnson County for Wyandotte County by WaterOne was high; adds four or five percent cost because of delays and other variables. If we were to look at this as, Missouri has more snakes and they don't have them listed and federal government does not have them listed. Everybody assumes that we are going to delist, we are putting on SINC list, one step below, not off radar screen; still pay attention to them. Like to see Sierra club and other organizations put money in the pot and create habitat for this thing, spend it from private and public side that volunteers to mitigate. By reducing to SINC list make private and public growth increase less painful. Jennison – People need to take into consideration, not coming off the list, going to SINC. Had a lot of discussions before we made this decision and convinced it is the right decision. We are not advocating responsibility to lead, direction we are taking is an important direction. Issues with this species, if came before legislature, would carry weight; would have questions on data and baseline. Concern of being in periphery range of the species; our act did not consider whether it was abundant around the world, only in Kansas; if we have habitat people want to see species. When you say politics, people get idea of a dirty word; protect our authority and look at way we conserve threatened and endangered species; conserve our environment. Take the polls and 90 percent want to protect species, but people have gotten further away from nature and we have a job to inform them. If we do not take this action it will impact our ability to make future decisions. The only thing we did was incorporate what the legislature told us to do in 1997, socio-economic aspects. Commissioner Budd – The thing that sticks in my craw is legislature has fired across the bow many times, not necessarily a threat, but because constituents go to them and they try to circumvent the Commission. We try to make the best decision we can and hope we make the best decision for people of Kansas.

**Commissioner Don Budd moved to approve KAR 115-15-1 before the Commission.
Commissioner Randy Doll second.**

David Norlin - Understand your reasoning, other people are looking at Cedar Creek sewer project; .01 percent of total cost for mitigation. A few months is a small price to pay. Elaine Giessel – Sierra Club – Secretary has referred to 360a, it does not address delisting or downlisting. It deals with recovery plans for particular species (taken from statute); whenever species is added this amendment does not address delisting or downlisting. It allows for creation of a local task force. Amendment does not support his recommendation. Chairman Lauber – At previous meeting, veiled threat from Sierra Club, Secretary is acting in his authority. Pearce – What is difference between threatened and SINC? Miller – Have project oversight of threatened species, no oversight on SINC. Commissioner Dill – No mitigation if SINC. Miller – Correct.

Commissioner Dill – Motion to amend to leave redbelly snake as threatened, Commissioner Hayzlett second. Tymeson – Would need to do in next regulation also (115-15-2).

Commissioner Hayzlett – Your motion would leave as threatened, not SINC, if so then I withdraw my second. Chairman Lauber – Motion dies for lack of a second.

Commissioner Marshall – This is a hard decision, but what I do is go back to history. President Nixon signed, critically impaired species, a federal law; and I tried to study our state laws. As a physician have to apply the science, but also have to look at each patient. Not satisfied with baseline and not sure why this species was ever placed on list to begin with. No true statistical data; more concerned about habitat than the snake. I will vote in favor of this because biology along with science and the people brings it all together.

Other handouts: Reasons redbelly snake listed, from Ed Miller to commissioners; Unified Government of Wyandotte County email and letter; numerous emails from constituents; Kansas Livestock Association letter; and petitions (Exhibit GG).

The roll call vote on KAR 115-15-1 as recommended was as follows (Exhibit HH):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	No
Commissioner Lauber	Yes

The motion as presented on KAR 115-15-1 passed 7-0.

8. KAR 115-15-2. Nongame species; general provisions – Ed Miller, wildlife biologist, presented this report to the Commission (Exhibit II). Species moved from threatened to SINC and nomenclature changes. Commissioner Rider – This is to put others on list? Miller – Two birds and a salamander that are nongame species.

Commissioner Randy Doll moved to approve KAR 115-15-2 before the Commission. Commissioner Gary Hayzlett second.

The roll call vote on KAR 115-15-2 as recommended was as follows (Exhibit JJ):

Commissioner Budd	Yes
Commissioner Dill	Yes
Commissioner Doll	Yes
Commissioner Hayzlett	Yes
Commissioner Marshall	Yes
Commissioner Rider	Yes
Commissioner Lauber	Yes

The motion as presented on KAR 115-15-2 passed 7-0.

XII. Old Business

None

XIII. Other Business

A. Future Meeting Locations and Dates

January 8, 2015 – Bonner Springs Parks and Recreation, Sunflower Room

March 26, 2015 – Kansas Historical Society-Museum, Topeka

April 23, 2015 – GPNC, Wichita

June 18, 2015 - Hays

XIV. ADJOURNMENT

The meeting adjourned at 9:12 p.m.

(Exhibits and/or Transcript available upon request)