

TO: Ozark Fly Fishers  
FROM: Bob Temper, Director of Conservation  
DATE: February 18, 2003  
SUBJECT: Missouri State Senate Bill 360 Hearing

SUMMARY:

Senator Steelman and six (6) proponents addressed the committee followed by eight (8) opponents of the bill. Senators on the Commerce and Environmental Committee were given the opportunity to question each of the speakers. There are 10 Senators on the committee, three of which were co-sponsors of the bill.

Senator Steelman maintains that the bill is required to close loopholes in the present regulations and guidelines that do not protect the land owner and small gravel mining operator. The original bill has been modified to allow (but not require) the DNR to establish guidelines (not rules) for exempt operators.

Opponents believe that the individual land owner is already exempt and no further law is needed. They also believe that there should be little or no exemption for any commercial operator. All operators should have a set of rules by which to operate that can be enforced (the modification to the bill allowing guidelines for exempt operators was not made available to the general public until after the meeting).

The committee took no action on this bill at this meeting.

Conclusion:

Senator Steelman and proponents feel very strongly that this bill is needed to protect individual landowners and small gravel mining operators. Individual land owners feel the need to remove gravel which they believe is choking the streams. Opponents feel that there is no need to address the exemption already in place for land owners. They also point to scientific studies that indicate removing gravel from the stream has a negative effect. In its revised state the bill would allow for but does not require guidelines covering those exempt from the regulations. There are no provisions in the bill for notification or tracking of mining under exemption.

Recommendation:

Individuals should send written comments to the Commerce and Environmental Committee addressing their beliefs concerning this revised bill. Comments should also be directed to the Senator representing each individual's district in order that they are familiar with the position on the bill should it go to the full Senate. I do not recommend endorsement of the bill in its current state.

DISCUSSION:

Missouri Senate Bill 360 Hearing by the Commerce and Environmental Committee was held in the Senate Lounge of the State Capital Building, Jefferson City, MO at 8:30 a. m. on Tuesday February 18, 2003

Senator Steelman addressed the committee about the substitute bill which she evidently had just delivered to the committee at the start of the meeting. As per protocol, she stepped from the chair to address the committee as the sponsor of the bill about its status. Copies of the bill were not available at the hearing. I obtained a copy of the substitute bill from Senators Steelman's office upon request after the hearing.

Senator Steelman addressed the committee on the merit of the bill. She took several liberties in her description of the situation. For example, she stated that a conclusion had been reached by the Land Reclamation Commission after the work group process. In fact the LRC still has at least one additional hearing on the proposed rules and has not reached a conclusion. Senator Steelman described the bill as effectively exempting the land owners who only remove a truck load or two of gravel. Under questioning by the committee she changed that to a truckload or two per day. She appeared unsure of what the 5000 ton limit actually represents in the actual volume. She also described the process and guidelines applying to everyone, even if there is no permit. Senators Goode and Dourghty asked significant questions in attempts to determine what was meant and what the bill actually stated.

Following Senator Steelman's remarks and questions by the committee, there were 6 proponents and 8 opponents who offered comments.

#### PROPONENTS:

- Leslie Holloway, Missouri Farm Bureau
  - o Not agreeable to converting guidelines to rules
  - o Everyone should use "Best Practices" for removing gravel from streams
- Ron Hardieake(Sp?), Farmer in Owensville area
  - o Asked the rhetorical question – "Where does gravel come from?"
    - Answer offered - Lack of maintenance – farmers don't remove gravel because of fear of government regulations.
    - Farmers don't farm gravel areas therefore they didn't create problem
    - My editorial comment – did bad land management like clearing to close to streams produce unstable banks causing erosion and freeing of gravel upstream?
  - o Small gravel operators can serve small gravel market needs. 1 back hoe and 1 truck can service small customers that don't attract service from large gravel mining operations.
    - My editorial comment – how much damage can 1 such operator do to a stream when they operate without guidelines or regulation? Do many small unregulated excursions cause many scars to the stream? Is that acceptable under this bill?
- Randy Scherr, Mining Industry Council and Concrete Producers

- Favors establishing rules (rather than guidelines) as presented by “his association”. His people comply with the guidelines/regulations.
  - He did not say he supported the rules in the workgroup recommendations
- Supports the bill because he believes it would provide for everyone complying with the same rules.
- Senator Dougherty asked if this bill was an end run around working group. Mr. Scherr suggested they would work in concert because this bill would cover those not covered under regulation.
- In response to the question whether there was a right way or a wrong way to mine gravel, Mr. Scherr said his people do it the right way following the guidelines.
- Norb Glassmeyer (Sp?)
  - Enormous problem for land owners trying to operate when they are trying to take care of their property.
  - Crisis in business in Missouri. Lost a number of manufacturers and jobs go with that. What does the future hold for small gravel minor?
- Jimmy Smith – Land owner/farmer
  - 14 ton truck is typical gravel mining truck
  - Farmers did something. What did they do?
    - Cleared land to raise cattle – bad decision, now what
    - He currently farms 300 acres and put 400 acres in timber farming.
    - He hopes he is doing the right thing now but it doesn’t get gravel out of the stream.
  - 5000 ton/yr. of gravel represents \$2500/yr. in income to the land owner.
- Riley Godfrey – Private land owner in 3 counties
  - Same question he raises at every meeting
    - Does DNR really have authority
  - 1787 and 1871 Supreme Court rulings are referenced
    - Class 3 stream – property owner has exclusive rights
    - DNR should not be making decisions concerning his stream

#### OPPONENTS:

- Cynthia Andre, Sierra Club and land owner
  - Owns 90 Acres on Bull Creek
  - Participated in working group for Land Reclamation Commission
  - All scientific reports are against taking any gravel from streams
  - Everyone should be subject to mining regulations
  - Individual land owners are already exempt for their own purposes
    - No need to pass another bill to do it again
    - 5000 ton Is way to high for casual use exemption
- Bob Temper, Ozark Fly Fishers
  - State economic crisis should dictate no exemptions of fees
  - Likewise there should be no exemption to regulations

- Fisherman don't get a reduction in fishing license because of practice catch and release there by reducing the harvest.
  - 74% of existing permit holders would be exempt from regulations
    - That addresses a lot more than the small mining operator and land owner touted as the benefactor of the bill
  - Missouri Department of Conservation is one of best in country
    - Don't limit their success by not taking care of the land and stream resources
    - Small mouth program is starting to pay dividends that will bring many fisherman and tourists. Don't destroy the streams.
  - Scars from gravel mining will stay a long time and destroy area for tourism
  - 5000 tons in 5 tons trucks = 1000 trucks/yr.
    - \$300 fee/site = \$0.30 per truck load
    - \$2500 multi-site fee = \$2.50 per truck load
    - 10 ton truck would be 2 times these fees
    - None of these fees are what I spent in gas coming to the hearing
- Joel Vance – conservation author
  - Announced he would keep it brief – he is opposed to the bill
  - ¾ of anything is too much to exempt
  - USGS study was submitted for committee consideration
- Don Huckens – MU graduate
  - Stayed home in Missouri because of the streams
  - Missouri River is managed as a navigation channel and is mined
    - Rehabilitation had been started
    - Floods of 93 wiped out gains
  - Annual 5000 tons exemption would be a repeat business for landowners
- Gary McMichaels, Missouri Smallmouth Alliance
  - Tourism dollars is significant for the state far outweighing the gravel mining income
  - Gravel removal does not help – all scientific studies indicate it hurts
  - Need rules to be enforced , not guidelines
- Al Buchanen, American Fisheries Society
  - \$41 million in gravel mining income vs \$170 million in stream fishing expenditures in state
  - Tourism is in jeopardy
  - Erosion from gravel mining and poor land management causes gravel problem
  - Save the stream resource, kill the bill
- Josh Campbel, Missouri Colition for the Environment
  - Opposes the bill
  - Had handout
- Wallis Warren, Land owner, Small Business Owner, Chamber of Commerce, Ozark Fly Fishers newsletter editor
  - Extremely concerned about the future of our streams and our fish resource
  - Strongly suggest reconsideration of the bill

I have serious reservations about the 5000 ton exemption. Exempting 74% of the current permitted industry is not closing loopholes. It is creating a huge loophole. The information presented to the Land Reclamation Commission Working Group by the USGS indicated significantly less than half of the known gravel mining sites in Missouri were operated under permit. If there are no permits required, the Department of Natural Resources (DNR) cannot track mining much less determine if there is or is not compliance. Regulatory language is very specific. Allowing something is not the same as requiring it. Guidelines are not regulations. If there is no permit, just allowing guidelines in the regulatory position, the DNR has nothing on which to monitor and base enforcement.

The individual land owner currently has an exemption from permits and guidelines if gravel removed is for their own use. The same exemption is provided for government entities. Why then is there an additional 5000 ton exemption limit proposed for operators?

In a discussion following the hearing, Senator Steelman stated that she has been working with and has the backing of the DNR and Missouri Department of Conservation (MDC). The indication given at the last LRC meeting was that DNR had provided information to the Senators office as requested but there was no indication of working together on the bill. The NRC and MDC had representatives at the hearing but did not participate. With the LRC having yet to complete its work on potentially changing guidelines to rules it is hard to understand the necessity or timing of rulemaking to close loopholes or protect anyone's interest. It is also interesting to note that the usually cooperative professionals within the DNR and MDC have suddenly fallen silent. They will no longer discuss anything that has to do with gravel mining. Why?

It is important that the professionals in MDC and DNR have a voice in the process . I think they have been cut out of the system rather than leading it.