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To: House Agriculture and Natural Resources Committee  
Rep. Sharon Schwartz, Chair

From: Myndee Reed, Kansas Livestock Association

Re: **HB 2051, AN ACT concerning water; relating to limited transfer permits; exempting certain dams from jurisdiction; enacting penalties for lack of dam inspection; creating an incentive for multi-year flex accounts; administrative review of certain orders of the chief engineer.**

Date: February 7, 2013

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,300 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.*

Thank you, Chairwoman Schwartz and members of the Committee, my name is Myndee Reed and I am with the Kansas Livestock Association (KLA). We appear to today as a proponent of HB 2051, specifically as it relates to two provisions in the bill. KLA supported the reforms made last year to the multi-year flex account (MYFA) program. We believe the addition of subsection (i) of Section 5 will provide an additional incentive for participation in this program and provide a water conservation benefit. KLA commends the Kansas Department of Agriculture for proposing this change.

We also support the concept of decreasing the number of dams subject to permit and inspection. However, we would like to propose an amendment to the dam safety portion (Section 2) of HB 2051. This amendment would strike lines 13 and 14 on page 3 and replace that language with the following: "(1) The dam has a height of less than 30 feet and a storage volume at the top of the dam elevation of less than 150 acre feet;".

Before explaining the requested amendment, the committee should understand why we have an interest in this provision. Many KLA members operate beef cattle feedyards, dairies, and swine units, known as confined feeding facilities. If large enough, these facilities are required to install wastewater containment structures. These structures are designed to avoid releasing water, even in high water flows. This allows the facilities to impound nutrients in runoff water from the confined feeding facilities and apply the nutrients to agricultural land at agronomic rates to avoid polluting waters of the state. The wastewater containment structures require a permit from the Kansas Department of Health and Environment (KDHE) to ensure proper design. Kansas law also requires the KDA Division of Water Resources (DWR) to inspect the structure and issue a dam safety permit for the same structure already permitted by KDHE.

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This creates a duplicative regulatory regime that scrutinizes similar design requirements, causes unnecessary expense and delay to completion of the facility, and provides little, if any, enhancement to public safety.

Further complicating the duplicative regulatory regime is that the DWR dam safety program was not designed to accommodate wastewater containment structures at confined feeding facilities. The dam safety program was designed for farm ponds and reservoirs that hold only a limited water supply and allow excess flows to pass through the system via an overflow pipe and emergency spillway. Conversely, wastewater containment structures at confined feeding facilities are built to hold water in high flow events to prevent water pollution. Improper design of existing DWR dam safety regulations has led to excessive delays in the DWR issuing dam safety permits. In some cases these delays have caused the dam safety permit to lag KDHE water pollution control permits by more than a year.

The KDA's solution to the problem was to exempt smaller, low risk dams from the inspection and permit process, hoping it would exclude most of the wastewater containment structures operated by confined feeding facilities. We appreciate the Department's efforts and thank them for their work, but the proposal in HB 2051 is not adequate to exempt a number of wastewater containment structures operated by confined livestock operators. By increasing the exempt height limit to 30 feet and the exempt storage volume to 150 feet will provide regulatory relief to a larger number of future applicants.

It's important to note our proposed changes to HB 2051 would not pose a safety risk. Even though the amendment would increase the storage volume of dams exempt from a permit, the bill also requires a dam over 25 feet of height and 50 feet of storage volume to be registered with KDA Division of Water Resources (DWR) and the dam must be a hazard class A to receive the permit exemption.

Hazard class A ensures that if the dam were to break it would only inundate farm property and have an exceptionally low risk to human life. Hazard classes are typically determined by inputting the dam specifications into a computer model that examines the width and depth of inundation downstream if a dam were to break. If public highways, railroads, or houses are in the inundation area, the hazard class would change to a class B or C and would require the structure to be permitted under the bill.

KLA believes our amendment will exempt most of our member structures and prevent duplicative regulation, while also ensuring public safety. In putting together our proposed amendment, KLA staff consulted with certified engineers at our subsidiary corporation KLA Environmental Services. These engineers design wastewater containment structures on a daily basis and have experienced the permit process firsthand.

Thank you for the opportunity to submit testimony. KLA urges the committee to pass the bill with our suggested amendment.