

Testimony on HB 2073
to
The House Agriculture and Natural Resources Committee
By Kim Christiansen
Kansas Department of Agriculture
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Good afternoon, Chairwoman Schwartz and members of the committee. I am Kim Christiansen, chief legal counsel with the Kansas Department of Agriculture, and I am here to express KDA's opposition to House Bill 2073.

KDA is committed to working with all water users in Kansas to improve water conservation and management in the state. While KDA supports the intent to reduce certain permit requirements for landowners and local communities, we are extremely concerned with sections one, two and five of HB 2073. These sections will severely restrict the authority of the KDA Division of Water Resources chief engineer to review the safety of projects for protection of life and property, which is a core responsibility of the position and obligation of the department.

KDA is prepared to work with the committee on this issue, however, and is prepared to propose amendments to address our concerns with sections one and two of HB 2073. Further, we propose that these amendments be attached to HB 2051 to provide a consolidated review of this statute. Further, a portion of section five is unnecessary.

Section one of HB 2073 proposes an exemption for all stream crossings used for agricultural purposes. Risk and potential impacts are directly related to watershed area. Therefore, KDA opposes an exemption that does not place an upper limit on watershed area. It is important to note that KSA 301(c) already provides an exemption for rural areas where the watershed area is less than 640 acres. In order to address the department's concerns with section one, we propose an amendment to HB 2051 to increase the exempt watershed area for rural projects in 82a-301(c) from 640 acres to five square miles. This is a responsible and reasonable exemption and KDA urges the committee's support.

Section one of HB 2073 also proposes exemptions for maintenance of channels and other projects. While we support the intent to reduce regulation of less significant activities and fully support efforts by communities to clean-up or maintain stream channels, we oppose the language in section one as it is unclear and may result in the modification of stream beds or banks. Instead, KDA proposes the following amendments in HB 2051 to reduce the regulatory burden placed on landowners and local communities:

- Increase the exempt watershed size for all stream obstruction projects and move this exemption from regulation to statute;

- Eliminate the fee increase for projects started without a permit by removing the ‘construction in progress’ fees established in KSA 82a-302; and
- Replace the exemption for ‘jetties or revetments’ with an exemption based on project dimensions, which will allow exemption of a broader range of projects.

The requirement to obtain a permit is currently based on watershed size as defined in regulation. KDA proposes moving this definition to statute and increasing the exempt watershed size for all stream obstruction projects. Zone one in Eastern Kansas would increase from 240 acres to one square mile. Zone two in Central Kansas would increase from 320 acres to two square miles. Finally, zone three in Western Kansas would increase from 640 acres to three square miles.

Section two of HB 2073 eliminates the chief engineer’s authority to inspect unpermitted dams and stream obstructions. KDA is opposed to this change because it restricts the chief engineer’s ability to review projects for the protection of life and property. Inspection of unpermitted obstructions is an essential task in that process, which is a primary function of the chief engineer.

Section five of HB 2073, especially paragraph (c) is unnecessary and the department recommends removing the proposed paragraph (c). Notification to the chief engineer is not required for the routine maintenance described, including the removal of drift, trees, shrubs, vegetation, rubble, debris and other such natural or man-made material from streams.

KDA has no objections to sections three and four of HB 2073.

Thank you for the opportunity to speak with you today. I will stand for questions at the appropriate time.