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To: Senate Natural Resources Committee  
Sen. Larry Powell, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: SB 153, AN ACT concerning water; relating to dams.

Date: February 15, 2013

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,500 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, Chairman Powell and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA appears to today as a proponent of SB 153. KLA supports the concept of decreasing the number of dams subject to permit and inspection, but we would like to propose an amendment to subsection (d) in Section 1 of the bill. This amendment would strike lines 21 through 28 on page 2 and replace that language with the following: "*(d) The prior written consent or permit of the chief engineer shall not be required for construction or modification of a dam that is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d.*".

The reason to delete subsection (d) is because the language is redundant. If dams of less than 30 feet of height and less than 150 acre feet of capacity are not within the definition of a dam in subsection (b), there is no need for subsection (d). It would create a regulatory scheme for a dam that is not defined as a dam in section (b).

The language we request to replace the current subsection (d) is to avoid duplicative regulatory requirements that currently exist. 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 under the state's water pollution control laws found in K.S.A. 65-171d. These structures are designed to capture and retain all runoff water, even in high water flows. The structures allow a facility to impound nutrients found in runoff water from the confined feeding facility and later 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 Kansas Department of Agriculture (KDA), Division of Water Resources (DWR) to inspect the structure

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and issue a dam safety permit for the same structure already permitted by KDHE. 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 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.

We have worked with the DWR to try and develop an alternative regulatory process for wastewater containment structures. We appreciate DWR's efforts and thank them for their work, but believe the most efficient means of resolving this issue is to exempt wastewater containment structures operated by confined livestock operators if the structures have already received a KDHE water pollution control permit.

It is important to note our proposed changes would not pose a safety risk. Even though the amendment would exempt wastewater containment structures from a DWR permit, it would still be scrutinized by KDHE. Although each agency looks at a different technical checklist of items, both programs utilize similar engineering data to ensure the wastewater containment structure does not fail. Although KDHE is specifically looking to prevent pollution, it still has the goal of avoiding dam failure.

KLA's amendment will prevent duplicative regulation, while at the same time protect 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.