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TO: Senate Committee on Agriculture

FROM: Brock Emmert, Watershed Institute, Inc. President

RE: Testimony in opposition of HB 2061

Good morning Chairman Love and members of the committee. My name is Brock Emmert, President of the Watershed Institute, Inc. (TWI), a small not-for-profit Kansas corporation.

Incorporated in 2004, TWI specializes in planning and designing solutions for natural resource management. Our staff includes degreed professionals with experience in fluvial geomorphology, stream restoration, streambank stabilization, aquatic biology, natural resource assessment and management, wetland delineation, enhancement, and restoration, and environmental and water law.

Over the last ten years, TWI staff have worked with a wide variety of local governmental entities, state and federal agencies, and private clients. In particular, Watershed Institute, Inc. staff have worked with watershed districts and the Department of Agriculture Division of Conservation, one of Watershed Institute's priority and most valued clients.

That being said, choosing to testify before you in opposition of HB 2061 was a difficult decision as TWI has great respect for the Department of Agriculture Division of Conservation. Nonetheless, hear I stand. TWI is a technical service provider for the Watershed Land Trust, Inc. (WLT), a charitable non-profit Kansas corporation. WLT is an U.S. Army Corps of Engineers approved In-Lieu Fee Section 404 mitigation provider for Kansas. WLT's mission is to preserve watersheds, streams, wetlands, and adjacent riparian corridors. Per U.S. Army Corps of Engineer's 2008 mitigation rule, WLT submitted an In-Lieu Fee program proposal that U.S. Army Corps of Engineer staff reviewed as well as an Interagency Review Team consisting of state and federal agency natural resource staff. This process required multiple revisions and considerable resources by WLT and TWI staff to complete. The main reason WLT was created in the first place was to hold conservation easements on mitigation projects like those being discussed in this hearing today.

As a technical service provider to Section 404 mitigation, TWI is aware of the difficulties watershed districts have to satisfy mitigation requirements. Since the 2008 mitigation rule, TWI staff have worked with watershed districts calculating mitigation responsibilities, attending board meetings to explain the mitigation process, and presenting information at State Association of Kansas Watersheds annual meetings.

To comply with the 2008 Mitigation Rule, mitigation responsibilities includes a process that every mitigation provider or permittee is required to follow. This includes locating a proper site—approved by the Interagency Review Team and U.S. Army Corps of Engineers—that the landowner protect with a perpetual conservation easement. A mitigation plan is required that addresses 12 categories. Baseline documentation, mitigation work plan, operation and maintenance, and long-term maintenance are just a few of the categories. These requirements involve a level effort that translates to significant costs.

These costs have drawn ire and dislike from watershed districts creating misperceptions about WLT and TWI. As a result, our In-Lieu Fee program has been perceived as a potentially less receptive entity and a third party agent with unjustifiable high costs. TWI has offered to discuss potential cost savings with the State Association of Kansas Watersheds as watershed districts can provide services that make mitigation responsibilities more efficient.

TWI opposes HB 2061 allowing the State of Kansas to move into the mitigation business and compete with the private sector. TWI cannot compete with an entity that draws upon existing state personnel to perform administrative duties and collect fees to fund mitigation responsibilities. Furthermore, HB 2061 produces an apparent conflict of interest and doctrine of merger violation with the Division of Conservation acting as an independent third party mitigation agent as they allocate funds to watershed districts for flood control projects, considered the mitigation impact. The bill would set a bad precedent, as other 404 permittees will desire to work with a third party governmental entity that can operate below the private sector market thus costing Kansas private sector jobs. In conclusion, Watershed Institute, Inc. respectfully requests a no vote on HB 2061.

Thank you.