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To: Senate Committee on Natural Resources
Senator Larry Powell, Chairman

From: Mike Beam, Sr. Vice President

Re: Testimony in **support of SB 118**, a bill amending the law regarding authorities for the Kansas Department of Agriculture's Division of Conservation

Date: February 5, 2015

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 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.

The Kansas Livestock Association (KLA) supports SB 118 because it authorizes the Kansas Department of Agriculture's (KDA) Division of Conservation to provide a service to Kansas Watershed Districts, whose purpose is to provide benefits to landowners and residents impacted by high rainfall and flooding events.

Many of our members are landowners and agricultural producers who farm and ranch in watershed districts across Kansas. They also serve on the boards of directors of these local government entities, and are engaged in planning and prioritizing projects that reduce physical impacts, such as erosion and safety concerns associated with high water events (flooding). These landowners and board members have repeatedly expressed frustrations with the costly and burdensome mitigation requirements necessary to acquire a "Section 404" permit. (This permit is a requirement of Section 404 of the Clean Water Act (CWA), whose purpose is "to restore and maintain the physical, chemical, and biological integrity of the nation's waters".) KDA can provide a list of watershed district project applications that have received funding, but cannot move forward because of the costs and regulatory burdens necessary to secure the Section 404 permit.

Why the costs?

The accompanying rules for the CWA establish "compensatory mitigation" criteria for projects (watershed dams) that impact the natural flows (streams) across the landscape. The mitigation process is designed under the basic premise that a proposed project (watershed dam) may have impacts that are quantified by debits. Before the permit will be issued, the responsible party must mitigate by identifying and designing activities that provide quantifiable credits to offset the debits incurred by the adverse impacts of the project.

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Examples of projects or activities that provide credits include stream channel restoration, stream bank modifications that reduce erosion, impoundment removal, road crossing improvements, and the establishment of natural buffers.

In many instances, the federal rule and Kansas Stream Mitigation Guidance (KSMG) require a perpetual conservation easement or restrictive covenant to accompany these mitigation projects to assure they remain viable and effective. Furthermore, the federal rule and KSMG require these conservation easements or covenants to be held and administered by an entity other than the watershed district, often referred to as a “third party”. While the rule and KSMG suggest a third party is not always necessary, this determination appears to be the discretion of the Corp’s District Engineer and if a third party grantee is not part of the mitigation project there will be fewer credits awarded for the mitigation activities.

In addition to the expense of the mitigation activities (construction of the projects and purchasing the conservation easements), eligible third party grantees are required to provide evidence they have the resources to administer, monitor and enforce the terms of the conservation easement or covenant. As you might expect, the resources for providing this service for a perpetual duration comes at a considerable cost.

Purpose of SB 118

During our discussions with the Corps of Engineers and KDA in 2013 and 2014, it became apparent that conservation easements or covenants required for watershed district mitigation projects, held by a state agency such as KDA, will likely meet the third party criteria of the federal rule and KSMG. If KDA is authorized to provide this service, it should lessen the costs and responsibilities for watershed districts and expedite the Section 404 permitting process, resulting in the construction of high priority watershed structures in Kansas.

KLA appreciates the willingness of KDA to address the challenges watershed districts are facing and we encourage this committee to approve SB 118 so the agency has clear authority to move forward.

Thank you.