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**Testimony on SB118  
to  
The Senate Natural Resources Committee  
By Greg Foley  
Kansas Department of Agriculture  
February 5, 2015**

Good morning, Chairman Powell and members of the committee. I'm Greg Foley, Executive Director of the Division of Conservation of the Kansas Department of Agriculture, and I'm here to express support for SB118.

SB118 amends current Conservation District law to authorize the State Conservation Commission and the KDA Division of Conservation (DOC) to assist local government agencies in their efforts to comply with Section 404 of the federal Clean Water Act (CWA). The bill would authorize the DOC to hold easements, to assure completion of restoration projects and to assume third-party responsibility for long-term protection of mitigated stream and wetland sites.

Most of the CWA is implemented by the Environmental Protection Agency (EPA), however, the U.S. Army Corps of Engineers (Corps) is delegated to implement Section 404 of the Act. Section 404 regulates the discharge of dredged or fill material into an area that will have a unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife or recreational areas. The Corps has adopted stream mitigation guidelines that define when construction activities impact wetlands and/or streams and must be offset by compensatory mitigation. For example, a watershed district proposing to build a flood control dam might be required, through an approved mitigation plan, to restore and protect a nearby stream segment to offset the stream and adjacent riparian area inundated or removed with the installation of their dam.

As a condition of approval of the 404 permit, the Corps has specified that mitigation sites must be legally protected by a third party entity. This means that a 404 permit will be issued to a watershed district only after a third party entity has agreed to protect their proposed mitigation sites. Third party protection services are currently offered in Kansas by five entities including, the Watershed Land Trust, the Sunflower Land Trust, Midwest Mitigation Oversight Association, the Platte Land Trust and the Kansas Alliance for Wetlands and Streams.

SB118 would allow the DOC to provide the required third party services to watershed districts and other local government agencies. As we work on the Governor's 50 Year Vision for Water, we believe watershed dams are key components to trap sediment and reduce cumulative sediment loads entering state and local water supply impoundments. This is a state/local partnership that will work to provide flood and sediment reductions in Kansas watersheds. We believe this could reduce some of the cost incurred to permit and construct a new watershed dam.

SB118 would authorize the DOC to hold third-party easements only as a result of the CWA 404 permitting process. The DOC would hold conservation easements on stream or wetland sites specific to an approved mitigation plan. All costs to establish the mitigation site would be borne by the 404 permit applicant. KDA would establish fees to cover the legal and administrative costs of accepting and monitoring easements. Fees for administration of this work would be identified in the DOC/WD contractual agreement prior to approval. No new KDA staff positions would be required, and administration and legal services would be provided by current KDA employees.

The DOC envisions the program to detailed guidance that I will highlight below:

- A. Watershed District(WD) submits application to participate in 3<sup>rd</sup> Party Easement Program
- B. WD's consultant/engineer develops compensatory Mitigation Plan for Permittee-Responsible Mitigation, as required by Corps
- C. WD submits Corps' approved mitigation plan to DOC
- D. DOC, WD and the mitigation site landowner will review and concur on:
  - a. Terms of the Conservation Easement
  - b. Performance Standards and timelines for project installation
  - c. Monitoring and Management Plan
  - d. Financial assurances
- E. Contracting
  - a. DOC contract with WD detailing all responsibilities and terms of mitigation (D above)
  - b. DOC contract with Corps accepting easement
  - c. Easement Contract with landowner- executing easement
- F. WD granted 404 permit and proceed with construction

The Kansas Department of Agriculture and the State Conservation Commission supports SB118 and believe that it creates a useful tool for watershed districts and other local government agencies.

Thank you for the opportunity to present testimony. I will stand for questions at the appropriate time.