

## MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on March 12, 2001, in Room 423-S of the Capitol.

All members were present.

Committee staff present:      Raney Gilliland, Legislative Research Department  
   Gordon Self, Revisor of Statutes Office  
   Kay Scarlett, Committee Secretary

## Conferees appearing before the committee:

Troy Schroeder, Department of Wildlife & Parks  
Representative Melvin Minor  
Ralph Arnold, Mayor, City of Larned (written only)  
Lee Borck, President, Ward Feed Yard, Larned  
Richard Boeckman, Attorney, Great Bend (written only)  
Marian Mull, Larned  
Ron Ashworth (no written testimony)  
Alan Buster (no written testimony)  
Marty Loving (no written testimony)  
David Pope, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture  
Clint Riley, Attorney, Department of Wildlife & Parks

Others attending:      See attached list

Troy Schroeder, Department of Wildlife & Parks, presented a draft of a Kansas Buffer Partnership for Clean Water Program. He stated that buffers provide common sense, cost-effective conservation. By putting small sensitive areas of the field in permanent vegetation, environmental benefits can be achieved over the entire field and beyond, allowing most of the field to remain in production. These buffers will not only control erosion and improve water quality associated with crop land runoff, wildlife habitat will also be improved. He noted that although this project is still in the planning stages and the number of partners involved and the level of funding are unknown, details of project coordination, hiring/training, job descriptions/duties, etc. will be developed prior to May 1. He provided several brochures and an article from the Wichita Eagle. (Attachment 1)

**Hearing on HB 2561 - Imposing requirements prior to issuance of certain certificates of water appropriation to federal or state governments.**

Chairman Johnson opened the hearing on **HB 2561**. Raney Gilliland explained that **HB 2561** would amend the Kansas water appropriation act relating to certificates of appropriation issued to government entities for diversion of water in amounts exceeding 15,000 acre feet after January 1, 2000.

Representative Melvin Minor outlined the requirements for issuance of a certificate of a water right in excess of 15,000 acre feet to a state or federal agency as set forth in **HB 2561**: 1) The Chief Engineer would be required to publish in the Kansas Register the information used to make the determination; 2) Water right holders within the affected area would be given 120 days from date of publication to challenge the findings; 3) If challenged, a hearing before a hearing officer would be required, and may be appealed to the district court; and 4) The law would be retroactive to include all certificates issued on or after January 1, 2000. (Attachment 2)

Representative Minor read testimony submitted by Ralph Arnold, Mayor, City of Larned, on behalf of the Larned City Council in support of **HB 2561**. The City of Larned believes the Cheyenne Bottoms water right certification could cause a significant curtailment of water usage when flow in the Arkansas River cannot

## CONTINUATION SHEET

support the diversion to Cheyenne Bottoms. It is felt that the future economic impact to the City of Larned could be substantial as growth would be limited by the loss of water supply and by the inability to replace the water supply due to cost or availability. (Attachment 3)

Lee Borck, President, Ward Feed Yard at Larned, a commercial cattle feeding operation with extensive irrigated farming interests, spoke in support of **HB 2561**. He believes a public hearing should be held concerning the Cheyenne Bottoms water right certification to assure the public that a transfer of water rights of this magnitude between state agencies is held to the same standards as private water users. (Attachment 4)

Richard Boeckman, an attorney from Great Bend representing a group of water users in Barton and Pawnee Counties concerned about the certification permit held by Kansas Department of Wildlife & Parks to divert water from the Arkansas River into the Cheyenne Bottoms, submitted written testimony in support of **HB 2561**. (Attachment 5)

Marian Mull, an irrigation user from Larned, testified in support of **HB 2561**. (Attachment 6)

Ron Ashworth, Alan Buster, and Marty Loving, irrigation users from Pawnee County, appeared in support of **HB 2561**.

David Pope, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, appeared in opposition to **HB 2561**. He explained the process to receive a permit to appropriate water for beneficial use and, ultimately, a certificate of appropriation. Specifically, he reviewed the water right and process used to certify the diversion of water from the Arkansas River to the Cheyenne Bottoms wetlands. He expressed concern that this bill would require that the Cheyenne Bottoms certificate be reviewed through an after-the-fact public hearing process, stating that once water is diverted under an appropriation right, it becomes a real property. He questioned whether it would be good policy to set a precedence that one type of water right can be subjected to a different type of process. In addition to the impact on the Kansas Department of Wildlife and Parks water right at Cheyenne Bottoms, he explained that this bill would apparently impose these requirements on any government entity that had a water right of this size, examples would be public water supplies operated by cities or water districts, large irrigation districts, and any other public entity that would operate a large water management project in the future. (Attachment 7)

Clint Riley, Attorney, Department of Wildlife & Parks, testified in opposition to **HB 2561** as it would impact only one certificate of appropriation, and would impact that certificate retroactively. The certificate of appropriation to Kansas Department of Wildlife & Parks for the diversion of water from the Arkansas River for use at Cheyenne Bottoms Wildlife Area was issued in August 2000. He explained that the original application for this water right had been filed in 1954; the perfection period closed in 1967, but the certificate of appropriation had not been issued. He questioned the wisdom and precedent of applying retroactive procedures to select water rights. (Attachment 8)

As there were no other conferees, the Chairman closed the hearing on **HB 2561**.

### **Discussion and action on HB 2468 - Enacting the land stewardship and productivity act.**

Chairman Johnson opened discussion on **HB 2468** and asked Raney Gilliland to review the bill that would rewrite and update Kansas noxious weed law.

Gordon Self, Revisor of Statutes, explained proposed technical and clarifying amendments to **HB 2468**. (Attachment 9) Representative Freeborn moved to adopt the amendments contained in the balloon. Seconded by Representative Schwartz, the motion carried.

Representative Dahl moved to amend **HB 2468** to require that the same financial incentive apply whether the responsible party purchases chemicals from the county noxious weed department or a registered Kansas pesticide dealer as proposed in the amendment by the Kansas Agricultural Alliance. (Attachment 10) The motion was seconded by Representative Feuerborn. After much discussion, the motion carried.

CONTINUATION SHEET

Noting numerous concerns with the bill, the Chairman appointed a subcommittee on **HB 2468** consisting of Representative Dan Johnson, Chairman; Representative Don Dahl; and Representative Bruce Larkin.

The meeting adjourned at 6:20 p.m. The next meeting is scheduled for March 14, 2001.

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 12, 2001

NAME	REPRESENTING
LEE BORCK	WARD FEED YARD
William T. Scott	KS Dept of Agriculture
Tom Sim	Kansas Dept. of Agriculture
Justin Holstin	KS Co-op Council
Joe Lieber	KS Co-op Council
David BEVANS	POWNEE BEEBULDERS, Inc
Donald D. Alward	Pawnee Co. Farmer
Alan Baster	Pawnee Co. Farmer
Myrtle Dennis	Golden Bell Feed + Seed + Kindly
Rachael J. Bert	Bert + Wetta Sales
R E Bert	Bert + Wetta Sales
Tom Tunnell	KECA / KGF A
Julie Jimison	KGFA
Bob Abel, Jr.	Jefferson County
Pat Holisow	Lakette County
Rodney Biesenthal	Pottawatomie Co. NXWD
Marian Mull	Mull Farms & Feeding Pawnee Rock
Marty Loving	Loving Farms Inc Pawnee & Barton Co Farm
JOHN KAGUS	SHAWNEE COUNTY





# **DRAFT**

## **KANSAS BUFFER PARTNERSHIP FOR CLEAN WATER**

### **INTRODUCTION**

Water quality is a major environmental concern for Kansas and the rest of the nation. Cropland runoff (Non-Point Source) is of particular importance in Kansas because of the large amount of cropland present. Fortunately there are tools available to control erosion and improve water quality associated with cropland runoff. These tools as described in the Core-4 promotion are residue management, fertilizer management, pesticide management and the use of conservation buffers. Perhaps the best news is the use of these tools can lead to increased profitability as well as provide environmental benefits.

### **CONSERVATION BUFFERS**

Buffers provide common sense, cost-effective conservation. By putting small sensitive areas of the field in permanent vegetation, environmental benefits can be achieved over the entire field and beyond, and allowing most of the field to remain in production. Buffer practices include filter strips, riparian buffers, contour grass strips, waterways, crosswind trap strips and windbreaks. The buffer practices listed above qualify for the Continuous CRP (CCRP) signup. All but contour grass strips and cross wind trap strips qualify for bonuses through September of 2002, which include a 20% increase in annual rental rate, \$100 - \$150 per acre for signup and an effective 90% practice establishment cost-share rate. This is an attractive economic incentive for landowners. As the name implies, signup is open all year long and there is no national competition for acceptance.

### **NEED**

In spite of the apparent economic and obvious environmental benefits, enrollment in the CCRP has been less than expected nationwide. Even in Kansas where state financial incentives were provided in certain target areas, enrollment was only moderate. Kansas has enrolled 26,000 acres of CCRP buffers through December 15, 2000, while another Midwest state, Iowa, has enrolled over 200,000 acres in the program. The difference is apparently that the program was more aggressively promoted in Iowa. With the growing water quality concerns, Kansas could benefit from a greatly expanded CCRP/Buffer program. Wildlife habitat, especially for upland bird edge species such as pheasant and quail, would also be improved by buffers. This may be a major step in reducing the declining trend of these species that has occurred in the past 20 years because of habitat changes.

## **PROPOSAL**

A buffer promotion program similar to the successful Iowa effort could greatly increase buffer enrollment in Kansas. This plan would develop public private partnerships to fund temporary employees in the County Conservation District Offices. These employees should be supervised by the District. This work force would attempt to increase enrollment in buffer practices through program promotion and increased contact with producers. These employees would assist the NRCS DC in identifying areas of practice need, make producer contact to sell the practices and provide assistance with practice planning and layout as needed. It is assumed that these employees would be an asset to NRCS because of their staff shortage and growing workload. Some assurance should be made that buffer practices would be completed with cover best suited to wildlife.

## **PROJECT LOCATION**

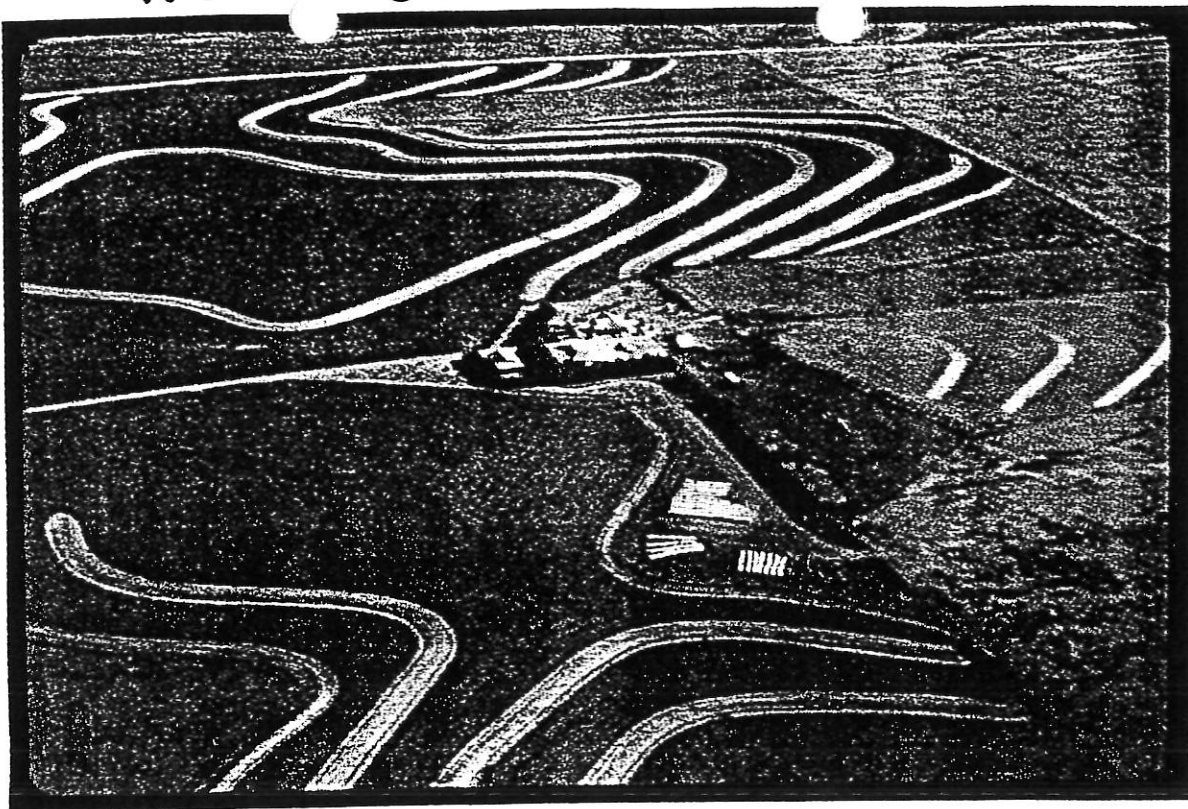
Areas with greatest need should be identified to receive benefit from this project. Possibilities include the Governor's Water Quality Initiative Area, basins identified as not meeting water quality standards by TMDL's, KDWP Pheasant Initiative and Quail Initiative counties. Within these areas, counties should be able to volunteer to participate in the program. The number of employees will be dependent upon the funding available. A ranking system will be employed to achieve county selection.

## **FUNDING**

A total of \$500,000 will be needed to fund 50 temporary employees. They will work about half time (less than 999 hr per year). The preferred work schedule will be 2-3 days per week throughout the year. This will achieve continuity and assure employees are available to follow through with plans that are started. Schedules should be flexible to allow farmers to fill these positions.

Note: This project is still in the planning stage. The number of partners involved and the level of funding is unknown, but KDWP and SCC commitments to date will fund 14-20 counties. The details of project coordination, hiring/training, job descriptions/duties, etc. will be developed prior to May 1. The partners involved will be participating in this process. Your suggestions are welcome.

Troy Schroeder, KDWP  
January 2001



Courtesy Photo

Kansas farm country is laced with thousands of miles of farmfield terraces. A new government program will pay farmers to convert them to wildlife habitat, which will also benefit their crop production.

# TERRACE TRAFFIC

■ Greg Andersen's grassing terraces in Gove County are a hotbed for wildlife, and now there's a program to encourage others to plant similar terraces.

BY MICHAEL PEARCE  
The Wichita Eagle

**K**ansas farm fields are laced with miles of terraces, stunted man-made ridges snaking along contour edges to catch silt and stop wind.

Mundane to the eye, most resemble terraces in the next field, the next county and the next state.

Then there are the terraces on Greg Andersen's field.

Rather than short winter wheat or chopped milo stubble, his terraces are capped with chest-high native grasses.

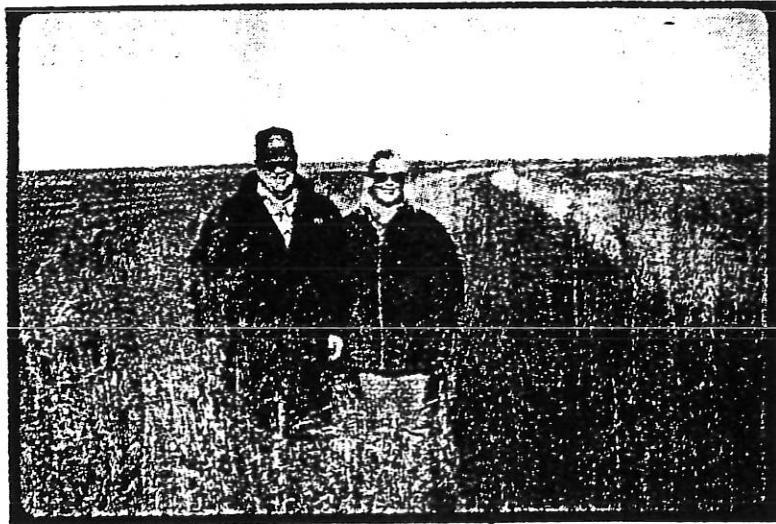
During the summer, the flaxen-colored terraces are accented with masses of yellow sunflowers.

All year, the woolly terraces teem with wildlife.

Ranging from golf ball-sized fuzzy chicks to long-tailed roosters, pheasants are more numerous in Andersen's field than most in Gove County.

Prairie songbirds can be too numerous to identify.

For a magical few fall weeks, the terraces are dotted with apricot-colored Monarch butterflies.



Courtesy photo

By planting the terraces of one field to natural grass, Greg and Mary Andersen enjoy more wildlife than ever without losing farming income.

Mule deer commonly flush from the grass and bound across crops as lush as any around.

Thanks to a recent USDA ruling, such grass-terraced fields could become common in Kansas.

Grassing terraces was originally part of the continuous sign-up portion of the Conservation Reserve Program that was introduced five years ago.

Unlike the traditional CRP fields, the

continuous sign-up program was designed to take only small parcels of land out of production.

Native grasses had to be planted to combat wind and water erosion.

Paying landowners to add such grasses to terraces was seen as a benefit by farmers and nature lovers.

But USDA ruled it wasn't allowed since

Please see **TERRACES**, Page 15C

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Martens 6, Mills 6, Hem 6, Karschen 8. Totals: 18 (3) 23-30 62.
NORWICH: Batson 2, Smith 3, B. Holder 22, Sheeta 4, S. Holder 2, Poe 9, Hyres 7. Totals: 40 (2) 9-16 49.
<b>Madison 49, Madison 45</b>
Madison 7 12 9 21 — 49
Madison 10 14 9 12 — 45

**SEDAN:** T. Persinger 4, Blyk 4, Sweeney 7, B. Persinger 2, Deal 18, Kennedy 4, Cude 5, Clark 5. Totals: 21 (2) 5-13 49.

**MADISON:** Inman 1, Kump 13, Ramsey 4,

<b>Girls Basketball</b>
<b>Sedgwick 61, Pr. Prairie 40</b>
Pretty Prairie.....13 10 7 10 — 40
Sedgwick.....16 14 19 12 — 61

**PRETTY PRAIRIE:** McClelen 1, McDaniel 11, Hawkins 2, Vanderplieg 2, Schutte 12, McCutchen 7, Albright 5. Totals 15 (5) 5-13 40.

**SEDGWICK:** Bruhn 2, Herzelt 6, Isell 15, Ferrel 4, Niles 2, Busenitz 29, Mason 3. Totals 28 (0) 5-9 61.

Memphis.....31 15 4 86 206 168
Indianapolis.....25 24 6 56 188 207
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Huntsville.....21 27 3 45 139 185
Macon.....18 27 8 44 151 174
not the loss column.
<b>Saturday's Games</b>
Columbus 1, Indianapolis 0
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Columbus at Indianapolis
Huntsville at Macon
Wichita at Memphis
<b>Monday's Games</b>
No games scheduled

Buffalo.....12 15 .444 4
<b>Saturday's Games</b>
Harrisburg 16, Baltimore 15
Buffalo 13, Philadelphia 8
<b>Sunday's Games</b>
Philadelphia at Cleveland
Harrisburg at Kansas City
Wichita at Milwaukee
<b>Monday's Games</b> No games scheduled
<b>Tuesday's Games</b> No games scheduled
<b>Wednesday's Games</b>
Harrisburg at Philadelphia
Milwaukee at Toronto
Baltimore at Kansas City

<b>Hesston 91, N. Platte 86</b>
<b>NORTH PLATTE:</b> Gillespie 11, Rickert 19, Rickley 4, Poneson 8, Stump 8, Oberg 7, Samek 13, Brown 12, Tait 4. Totals: 32-66 8-11 88.
<b>HESSTON:</b> Zoschke 9, Pieper 0, Fields 19, Miller 7, Troyer 13, Perkins 0, Hight 0, Graham 16, Nichols 0, Lechly 0, Sandberg 2, Finch 0, Roth 11, Klotenstein 14. Totals: 32-73 22-35 91.
Halftime — Hesston 38, North Platte 38. 3 pt shooting — North Platte 14-32 (Rickert 5, Gillespie 3, Penson 2, Brown 2); Hesston 5-16 (Fields 3, Zoschke, Miller). Rebounds —

<b>Sacramento 49 (Pollard 11), 19 (Van Exel 10), Sacramen</b>
<b>Total fouls—Deliver 24, Technicals—Van Exel, Stric 17,317 (17,317).</b>
<b>Grizzlies 92, W. VANCOUVER (92):</b> Lori Abdur-Rahim 12-17 4-5 21 1 9, Dickerson 5-14 0-0 13 17, Strickland 1-5 0-0 3, Me 3 8, Abdul-Rauf 3-7 0-0 6, Totals 38-73 10-14 92.
<b>GOLDEN STATE (79):</b> Je 18, Jamison 8-18 4-4 21, I

# TERRACES

From Page 16C

terraces were already in place to prevent erosion.

Thanks to the lobbying efforts of groups ranging from Farm Bureau to the National Audubon Society, and some political maneuvering by Kansas Sen. Pat Roberts, grassing terraces was recently added back into the program.

It's one of the few things involving wildlife and agriculture where both sides win.

"We're really, really excited about it," said Randy Rodgers, Kansas Department of Wildlife and Parks small-game biologist. "The wildlife habitat benefits are huge. We needed this."

Though a fan of the sprawling fields of traditional CRP grasses, Rodgers said the smaller acreages of grassed terraces will probably offer more to wildlife.

"This is going to create a tremendous amount of edge habitat, places where two different kinds of cover come together," Rodgers said. "Edge is extremely important to upland birds like pheasants and quail."

Rodgers used the 180-acre field near Andersen's home as a prime example. Grassing the terraces only took 14 acres out of production, yet it created nearly 10 miles of edge habitat in the field that was otherwise broken crops.

Andersen estimates in the year he added the strips, he saw 10 times as many pheasants in and around the field.

Rodgers said by planting a mixture such as the one used in Andersen's terraces — switchgrass, little bluestem, side-oats gramma, Maximilian sunflowers, purple prairie clover and Illinois bundleflower — the terraces can offer birds a variety of benefits.

The terraces make good brood-rearing areas and winter cover. The sunflowers add a highly desired source of food.

The forbs add nitrogen to the soil and also leave the ground-level cover open enough to allow pheasants a place to easily run and hide.

"These strips also greatly improve the amount of escape cover available to pheasants," Rodgers said.

"With the terraces in grass, a hen doesn't have to go far to get her and her brood away from a hawk. As it was, if she was out in the middle of the field when it was being worked, she had to go a long ways to find some sort of cover. Hawks are primarily out there for smaller rodents, but they are opportunists."

Biologists, birders, hunters and environmentalists from coast to coast are hoping landowners will jump on the opportunity that's as beneficial for them as it is for wildlife.

Unlike the regular CRP program, landowners can sign up for grassing terraces at any time. Rodgers said most Kansas cropfields with terraces

would qualify for annual payments of between \$40 to \$50 an acre.

Some see that as found money. "Normally you don't raise too much of a crop on the top of the terraces anyway," said Andersen, who grassed his terraces before federal money was available.

"It costs a little to get the grass started, but once it gets that deep mass of roots, I don't think you'll ever have to rebuild your terraces like you would if you were farming them."

Rodgers agreed, saying that terraces grassed on a public hunting area 40 years ago are still standing.

Anderson said other benefits include blocking the wind that can erode and dry out topsoil.

In western Kansas, the farmer said the fact that it stops blowing snow is also important.

As well as keeping the snow on the field, where the moisture is desperately needed, the terraces keep the snow from blowing where it's not, such as into roads, farmyards or feedlots.

The grass strips also reduce and filter water runoff, which could significantly improve above and below-ground water quality.

Both Andersen and Rodgers said that the current plan is very "farming-friendly."

Not all terraces in a field have to be enrolled to qualify. The widths of the grass strips can also be varied to accommodate the size of farm machinery.

Some farmers have expressed con-

cern that the lush vegetation bisecting cropfields could lead to insect problems.

Andersen said it's far more likely to lead to insect solutions.

Last year, Gove County had a rare outbreak of green bugs in its wheat crop, causing many farmers to cut into their profit margins by having to buy and apply insecticides to their fields.

"The only field I didn't spray was the one with the grass strips," Andersen said. "I kept checking but the infestation level in that field was low enough it didn't have to be sprayed. I think the beneficial insects living in that grass were taking care of them for me."

After four years with the unpaid terraces, Andersen said he thinks his farm income hasn't lost anything because of the grass, while another important part of his life has certainly improved.

"The reason we got into this was because of the wildlife. We were just kind of down to nothing for pheasants," Andersen said.

"Our pheasant numbers have gotten better, we've started to see some quail, which are unusual out here, and we have a handful of prairie chickens. It's nice to see something out here again."

Information on grass terraces can be found at the USDA service centers in all county seats.

For questions about best plantings for wildlife, call Rodgers at (785) 628-8614.

# EL DORADO

From Page 16C

This year, another open-water spot should be attracting anglers to El Dorado.

"I'd have to rate the walleye as good mostly because of their numbers," Marteney said.

"My fall nettings showed there are quite a few walleye in there, but we've kind of fallen into a pattern that most lakes with an 18-inch length limit have."

Marteney said fishermen are going to have to release six or seven fish that are from 15 to 17 3/4 inches before they can keep a keeper. Fall testings show El Dorado holds walleye as large as seven or eight pounds. Such fish may take some extra angling skill to find.

Like all Kansas reservoirs, El Dorado channel catfish population continue to amaze the biologist.

"It seems like no matter where I put my fall nets, when I'd check them they'd have some really nice catfish to eight or nine pounds," he said.

As for tips for anglers, Marteney said they should try the rocks along the southern shoreline of the old Bluestem Lake area of El Dorado.

In 1995, Marteney started doing some experiments to see what kind of weedy habitat would grow in El Dorado.

Along with help from the Army Corps of Engineers, the biologist and some assistants started planting 14 kinds of aquatic vegetation.

INSURE FOR INCOME:  
CROP INSURANCE  
COVERAGE / 30

KANSAS

# FARMER

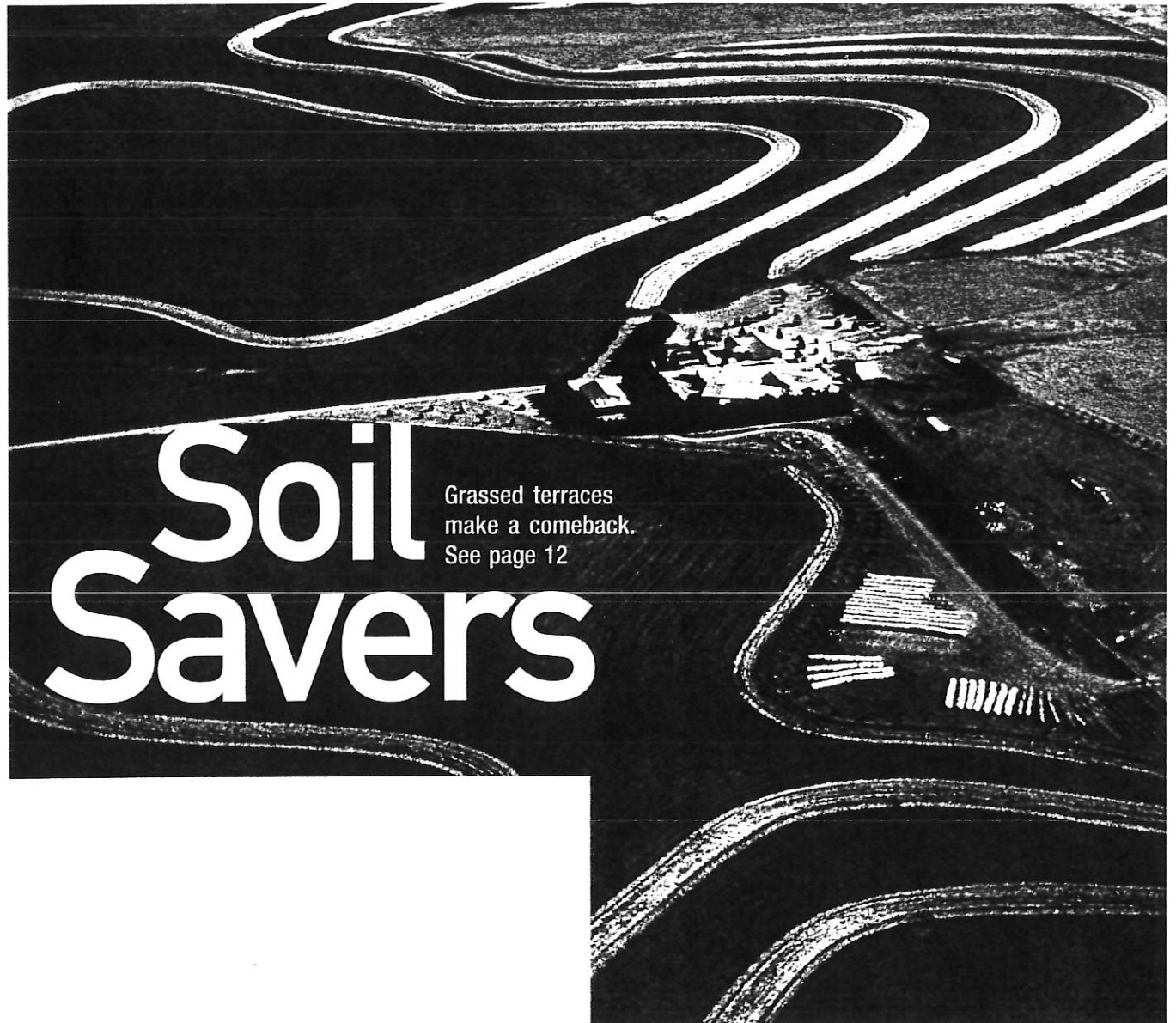
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MID-JANUARY 2000

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ON THE WEB / 8

RUBBING OUT  
CORN ROOTWORM / 26



## Soil Savers

Grassed terraces  
make a comeback.  
See page 12





COVER STORY

# Grassed terraces make a comeback

*USDA about-face  
gives these soil savers new life.*

■ *By Randy Rodgers*

**G**reg Andersen used to bag his limit of pheasants just walking around his Gove County farm. Pheasants were so common that he never participated in a formal hunt. Those days are in the past, but Andersen is doing what he can to bring them back.

Greg and his wife, Mary, concerned that their two children would never enjoy wildlife the way Greg did when he was younger, sought to improve the wildlife habitat on their 3,200-acre farm. They decided, with the help of the Kansas Department of Wildlife to grass terraces on one field adjacent to their house.

"The KDWP had been waiting for someone interested in doing something like this," Greg recalls. "They came up with several blends of grasses and we began thinking about all the advantages of grassed terraces."

The Andersens planted a mix of grass and forb seed into 14 acres of terraced milo stalks on a 180-acre field in February 1997.

At that time, the USDA was developing a new initiative to encourage farmers to install grass strips in their fields. The new Continuous Signup of the Conservation Reserve Program, announced in fall 1996, was considered by many Kansas conservationists to be the best multiple benefit program ever offered through the USDA. What the Andersens were doing appeared to be a perfect fit for the new Continuous Signup Conservation Practice 15A, better known as Contour Buffer Strips.

The conservation practices offered through the Continuous Signup of CRP provide so many benefits that USDA encouraged farmers to sign up for them throughout the year. Most of the practices involve placing strips of permanent vegetation, usually grasses, in

**Greg and Mary Andersen, Oakley, like the wildlife and erosion control benefits that come with grassed terraces. The Andersens planted 14 acres of terraces to a grass/forb mix in 1997. Since then, the pheasant population has increased about tenfold.**

strategic places in or around crop fields to control erosion. Unlike the regular CRP, erosion would be controlled while leaving most of the field in production. Eligible practices include placing grass strips along streams to filter silt and chemicals from runoff or east-west grass strips to prevent wind erosion.

#### **NO BIDDING REQUIRED**

One of the most attractive features of Continuous Signup is that it doesn't require a bidding process or the environmental 'points' used under the regular CRP. All croplands are eligible for appropriate Continuous Signup practices, not just highly-erodible land. Acceptance for applicable practices is a virtual certainty. Annual USDA payments for such practices are based on soil type and county averages for CRP rental rates. Some practices even come with a 20% bonus over the normal rate.

Kansas conservationists are excited about the prospect of installing Contour Grass Strips on terraces. This combination seems natural, since grassing terraces not only stabilizes the terrace and prevents it from washing, but also provides wind erosion protection and numerous crop production benefits.

Despite numerous benefits, the national FSA office disallowed establishment of contour grass strips on terraces in March 1999. The FSA contended that grassing terraces would not reduce erosion or control runoff and that it

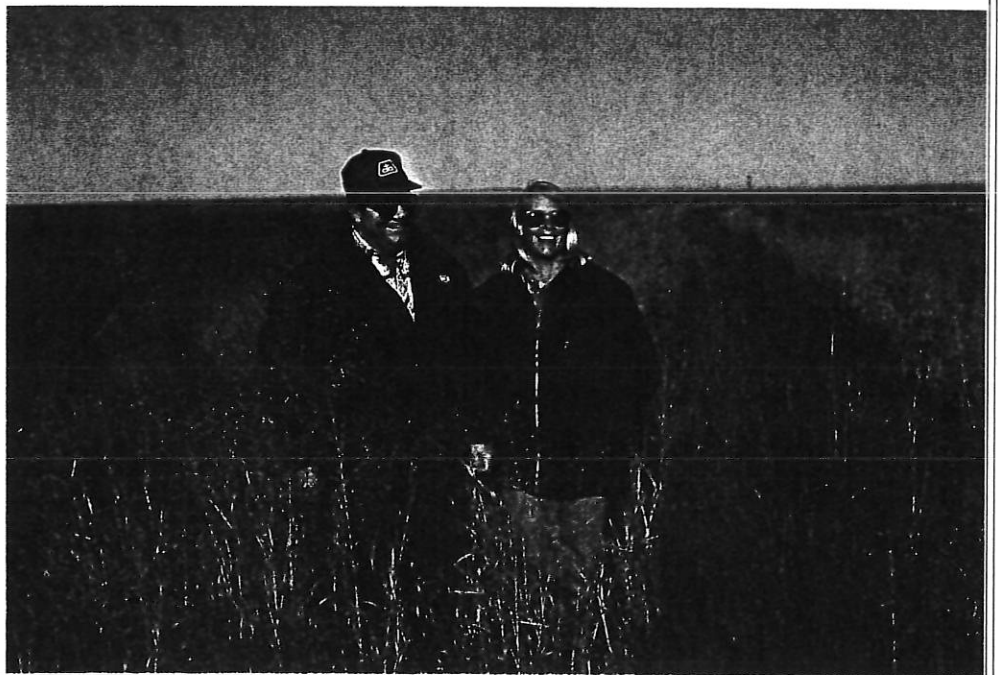
was a doubling up of conservation practices on the same field.

Local and national conservation organizations disputed the FSA ruling, pointing out the multiple benefits of grassing terraces, including clear-cut erosion-reduction and runoff-control benefits. Letters and calls from farmers, and Conservation Districts furnished ample grassroots evidence that grassing terraces provides significant practical erosion control.

Ultimately Sen. Pat Roberts gained Senate Agriculture Committee approval for attaching an amendment to the recent Ag Appropriations Bill that reversed the FSA's ruling. That bill, with the amendment attached, was passed by the Senate and the House, and was signed into law by the President in late October.

#### **FEW AFFECTED BY REDUCTIONS**

As a concession to Washington-based USDA officials, the amendment provides that CRP rental payments for grassed terraces are reduced by the depreciated amount of any federal cost-share that remains from terrace construction. Revised rules have not, as of this writing, been issued from USDA. However, Kansas conservationists expect few terrace systems will be affected by the rental payment reduction since most were built more than 10 years ago. Many others were not federally cost-shared. When final rules are



## GRASSED TERRACES

issued from USDA, NRCS District Conservationists will again be able to plan and sign up grassed terrace systems into the Continuous Signup of CRP.

Andersen never did sign up his grassed terraces into CRP. He winters cattle on the south half of that field. While the Continuous Signup permits up to two months of partial grazing, he wanted control of the terraces in case he decided to graze the entire field.

"Besides, my terraces are already planted. If I can get others interested in grassed terraces, maybe the money (USDA) would have given me can be given to someone else," he says.

### ENVIRONMENTAL BENEFITS

Greg appreciates the snow control he's getting. When a blizzard hit in October 1997, the Andersens had little significant drifting, and the livestock didn't deal with as much snow, thanks to the grassed terraces. The terraces should be more effective in the event of another blizzard, now that the grasses

are fully developed. What's more, the snow is distributed throughout the field, providing valuable moisture.

"There's a miniature windbreak on those terraces," he says. "The grass really stops the snow. The moisture I get from them is tremendous." The grass keeps hot winds from blowing across the field, and it holds the dirt on the terraces, he adds.

Mary likes the Maximillian sunflowers, which produce a spectacular plume of yellow flowers in mid-September. The sunflowers provide an attractive refueling stop for Monarch butterflies migrating to wintering areas in Mexico. Maximillian sunflower seed was included in the Andersen's grassed-terrace seed mix.

The Andersens' children, Casey and Linley, are also advocates of grassed terraces. Fourteen-year-old Casey used the benefits provided by grassing terraces as a subject for his seventh-grade science project. The terraces have added about 10 miles of habitat 'edge' to the area around the farmstead. Greg

estimates the number of pheasants have increased tenfold.

"We're seeing prairie chickens and quail on the terraces, too," he adds. "It's nice to have them walking around the yard."

Although some farmers have expressed fears that grass strips might become a haven for grasshoppers, Greg hasn't found that to be the case. In fact, studies in Europe and in the United States have shown that grass strips increase beneficial insects, which help control crop pests.

Now that grassing terraces is part of the Continuous Signup for CRP, with accompanying annual rental payments, conservationists expect many Kansas farmers to take advantage of terraces. If they're anything like Greg and Mary Andersen, once they try grassed terraces, it's a good bet they'll like them. ♦

—Rodgers is a wildlife biologist for Kansas Dept. of Wildlife and Parks Region 1 Office, Hays.





**(9) EXCELLENT WILDLIFE HABITAT:**



Grassed terraces provide good escape cover and will increase habitat "edge" tremendously. This edge is particularly valuable for edge-loving species like quail and pheasants. A seeding mixture that includes switchgrass, little bluestem, and broad-leaved plants like alfalfa and maximillian sunflower is best suited to providing wildlife habitat on terraces.

**) EASY TO FARM :**

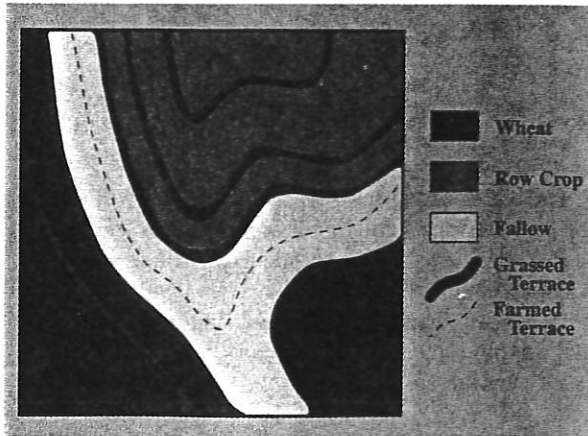


If you're already farming on the contour, farming along grassed terraces should fit right into your operation. Width of the grass strip can be varied, within the 60-foot maximum, to minimize point rows. Depending on the pattern of the terraces, grass strips may be designed to create a parallel cropping system that would minimize double application of seed, fertilizer, and pesticides. If grassing certain terraces might interfere with an efficient farming pattern, those terraces need not be grassed, so long as the terraces are well maintained. Whatever your terrace pattern you can easily grass those terraces that typically

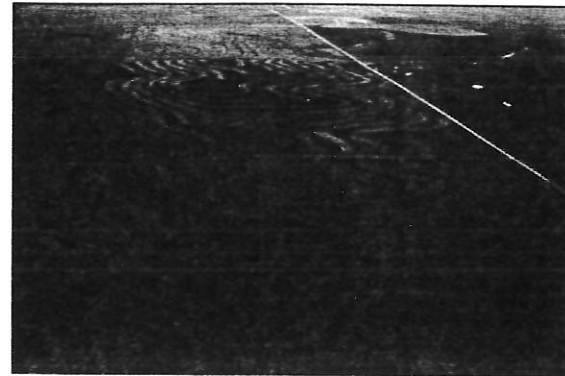
separate different crops in your rotation.

Grassing terraces can help you avoid the difficulty of maneuvering large implements over terraces. Have you ever run your combine header in the dirt while cutting terraces? Grass them and forget it.

What about chemical drift? The native warm-season grasses most useful for grassing terraces can tolerate modest herbicide exposure and be just fine. Spraying grass strips with herbicides or insecticides isn't recommended, but done carefully, usually isn't a serious concern.



●No matter what your crop rotation, **GRASSED TERRACES (CP15B)** and other practices available through the *Continuous Sign-up* of the Conservation Reserve Program can turn your farm into a model of soil, water, and wildlife conservation while improving your bottom line.



●If you have unterraced sloping land, there's a practice for you too. **CONTOUR GRASS STRIPS (CP15A)** will provide many of these same benefits.

●Do you farm level land with a potential for wind erosion? **CROSS WIND TRAP STRIPS (CP24)** are just what you're looking for.

For More Information  
Contact Your Local Offices of the  
**Natural Resources Conservation Service**  
and the  
**Farm Service Agency**

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10  
GOOD REASONS  
TO  
GRASS YOUR  
TERRACES

6-9  
1-1



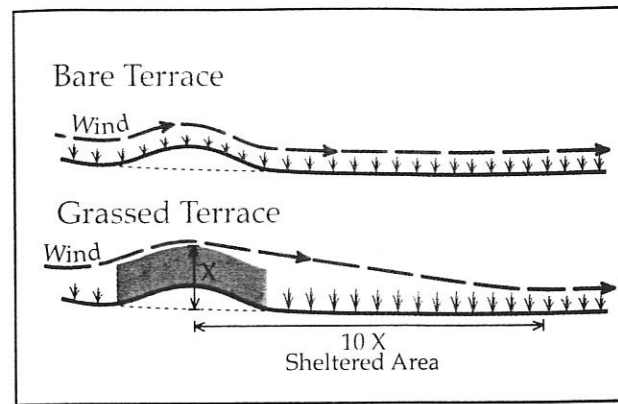
An outstanding opportunity to enhance your farm conservation and profitability is available through the *Continuous Sign-up* of the Conservation Reserve Program. Farmers can receive annual payments for establishing grass strips up to 60 feet wide on terraces. *Grassed Terraces* also offer benefits that can enhance crop production, increase efficiency, and improve soil, water, and wildlife conservation. Here are 10 ways *Grassed Terraces* can benefit your farm.





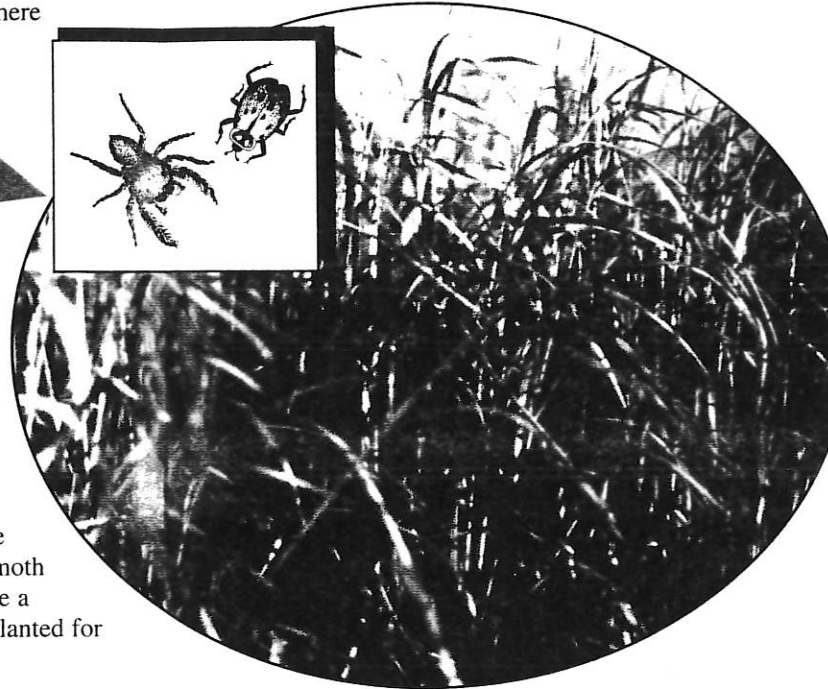
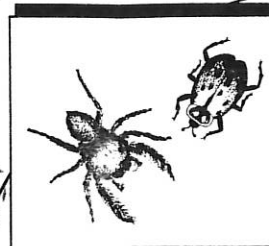
### (3) CROP SHELTERING:

Persistent winds on the Great Plains increase evaporation from the soil and steal moisture directly from your crops. By slowing air turbulence, grassed terraces reduce this moisture loss, allowing your crops downwind to put conserved moisture into additional growth. This gives young plants a better chance to develop deep roots and tap additional water. Grassed terraces can also reduce physical damage to young crops caused by wind-borne soil particles or the wind itself. Benefits from crop sheltering, snow catchment, and control of wind erosion are greatest where grass strips are generally perpendicular to prevailing wind directions.



### (4) BENEFICIAL ARTHROPODS:

Studies have shown that many beneficial insects and other predatory arthropods need permanent cover, especially grasses, for optimum populations. By grassing your terraces, you can provide places where these species, particularly predatory beetles and spiders, can survive. This allows them to spread into cropped areas quicker and in greater numbers in spring. These beneficial species are most important in controlling aphids and moth larvae. Grasshoppers have not proven to be a problem where native grasses have been planted for CRP.



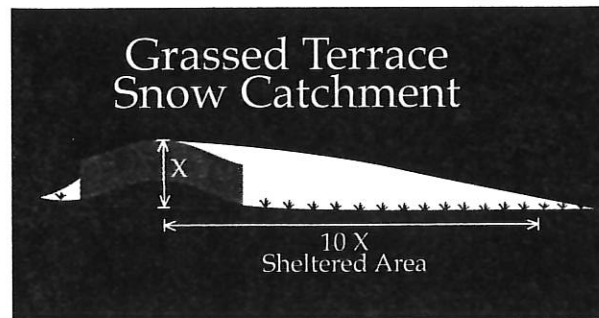
### (1) EROSION CONTROL / WATER QUALITY PROTECTION:

The sod-forming roots of native grasses will stabilize the terrace structure and protect it from being washed out during heavy downpours. Sediment, nutrients, and pesticides in runoff are reduced and gully development is prevented. Establishment of stiff-stemmed grasses, such as switchgrass and little bluestem, on the terrace ridge creates a windbreak that slows the wind and prevents it from stealing precious topsoil.

### (2) SNOW MANAGEMENT:

Because grassed terraces slow the wind at ground level, they keep snow on the field where it can benefit your crops. Trapped snow can substantially improve subsequent yields since the moisture from snow is very efficiently stored in the soil. High winds easily blow snow off unprotected green wheat and even off fields where moderate crop residue is present.

Grassed terraces will capture and distribute this snow across fields and, at the same time, reduce drifting onto roads and into livestock pens and farmsteads.



### (5) STOP REBUILDING TERRACES:

The sod-forming roots of native grasses will bind the terrace ridge tightly and, in most cases, ensure that it won't wash out or erode away. Since you won't need to rebuild terraces, you save fuel and time, and reduce equipment wear. By increasing organic matter and trapping wind-borne soil particles, grassed terraces may increase slightly in height over time.

### (6) TERRACE RIDGES DON'T PRODUCE THE BEST CROPS.

Since terrace ridges are more exposed to the wind, and rains tend to run off them, crops on terrace ridges often yield less than other parts of the field. This is especially evident in drier years or in regions with low annual precipitation. Some terrace ridges are composed mostly of subsoils that are also less productive. These factors make terrace ridges ideal sites for grass, since farming them may be less profitable.

### (7) INCREASED YIELDS / IMPROVED PROFITABILITY:

Research has shown that the above benefits, especially snow catchment and crop sheltering, can modestly increase yields in adjacent crops. This alone helps compensate for somewhat less acreage being farmed. When you factor in federal rental payments and the fuel and input savings resulting from a well-designed grassed-terrace system, this commitment to conservation has potential to improve the profitability of your farming operation.

### (8) EASY ELIGIBILITY / STABLE INCOME:

Because the conservation benefits of grassing terraces are so outstanding, USDA will accept most terraces for this practice regardless of soil type. Unlike regular CRP, you can apply for Grassed Terraces or other Continuous Sign-up practices anytime with no competitive bidding. Annual payments are based on prevailing rental rates for your area and the soil type. Terraces are eligible for Conservation Practice 15B if they are...

- still functional. Non-functional terraces must be repaired at the applicants expense.
- no longer under practice lifespan. Federal or state cost-shared terraces established for 10 years or more are generally eligible for CP15B.
- not already grassed.

Cropped areas between terraces must be wider than the grass strips. Limited grazing of grassed terraces incidental to gleaning crop residue must be approved by the Farm Service Agency County Committee with a 25% payment reduction for the CRP acres affected.





TOPEKA

HOUSE OF  
REPRESENTATIVES

MELVIN MINOR

REPRESENTATIVE, 114TH DISTRICT  
ROUTE 2, BOX 31  
STAFFORD, KANSAS 67578  
(316) 234-5887  
FAX (316) 234-6867

TOPEKA OFFICE  
STATEHOUSE, RM. 273-W  
(785) 296-7648

COMMITTEE ASSIGNMENTS

MEMBER: APPROPRIATIONS  
FINANCIAL INSTITUTIONS  
LOCAL GOVERNMENT  
JOINT COMMITTEE ON  
STATE BUILDING CONSTRUCTION

March 12, 2001

**PURPOSES FOR HB 2561 ARE AS FOLLOWS:**

- 1) Prior to issuance of a certificate of a water right in an amount in excess of 15,000 acre feet to a state or federal agency, the chief engineer shall publish in the Kansas Register the information used to make determinations under K.S.A. 82a 711-714.
- 2) Junior and senior water right holders within the affected area shall be given 120 days from the date of publication of the information in 1 to challenge the findings.
- 3) If the junior and senior water right holders seek to challenge the proposed certificate, they shall be given a hearing before a hearing officer - like other reviews of orders of the chief engineer - and may appeal to district court.
- 4) This law shall be retroactive to include all certificates issued on or before January 1, 2000. In short, certificates issued on or after this date that meet the requirements of Number 1 may be reviewed and challenged by junior and senior water right holders before the hearing officer and district court.

House Agriculture Committee  
March 12, 2001  
Attachment 2



# CITY OF LARNED

P.O. BOX 70 • 417 BROADWAY • LARNED, KANSAS 67550

(316) 285-8500 • FAX (316) 285-8544

"Cities Are What People Make Them"

March 12, 2001

The Honorable Melvin Minor  
State Capitol, Room 273-W  
Topeka, KS 66601

RE: HB2561 - Cheyenne Bottoms Water Right Certification

Dear Representative Minor:

On behalf of the Larned City Council and the citizens of the City of Larned, I am writing to communicate our support of HB 2561 which concerns the Cheyenne Bottoms Water Right certification. Please enter the following as testimony during the hearing on this bill:

As you and Senator Larry Salmans know, this issue is the City's number one legislative priority due to the known and unknown negative impact this certification will have on our area if it is allowed to stand.

The Cheyenne Bottoms water right certification will cause a significant curtailment of water usage when flow in the Arkansas River cannot support the diversion to Cheyenne Bottoms. The future economic impact could be substantial as growth is limited by the loss of water supply and by the inability to replace the water supply due to cost or availability.

In addition, the financial impact to Larned's public water utility is twofold. One, the current water appropriations have been bought and paid for through the last 40 years of development, and the Cheyenne Bottoms water right certification represents a very real loss of existing assets.

Second, the cost of securing replacement water supply will be at a premium given the fact that the groundwater management district in which Larned is located does not permit new wells. Only existing, precious, and expensive water rights are available to replace this loss.

The City of Larned accepts and supports the current policies and procedures for water right certification, and would not be participating in this challenge of the Cheyenne Bottoms water right certification if it was not for the fact that this certification is so far outside these policies and procedures as to constitute at the

VISIT Fort Larned National Historic Site & The Santa Fe Trail Center

worse, an unlawful usurpation of administrative power, and at the least a breach in public trust in which a governmental agency was given unfair preference to the disadvantage of water users in our area. Clearly, the history of how the Cheyenne Bottoms water rights were perfected and certified did not conform to Kansas State law and regulations and policy.

Is the State legislature the appropriate forum to challenge this certification? At this point in the process, it is the only forum which can offer a fair hearing and remedy to this matter.

Again, on behalf of the Larned City Council and the citizens of Larned, Kansas, I thank you for introducing this bill and sharing our concerns with your fellow legislators.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph C. Arnold". The signature is fluid and cursive, with a large loop at the end.

Ralph C. Arnold  
Mayor

Presentation –

RE: House Bill #2561

Mr. Chairman, Members of the Committee:

My name is Lee Borck, I am President of Ward Feed Yard in Larned, Kansas which is a commercial cattle feeding operation with extensive irrigated farming interest. I am here today to speak in support of House Bill #2561.

My interest in this bill rises from the approval of DWR permit number 2427 approved in August of 2000 certifying 18,135 ac. feet of surface water rights to Kansas Wildlife and Parks. This water is to be drawn from the Dundee drop structure located near Great Bend.

House Bill #2561 is not seeking to overturn the actions of DWR only asking that they be required to hold public hearings, which were never a part of this approval, so that the public may be assured that a transfer of water rights of this magnitude, between state agencies is held to the same standards as a private water user would. The bill may be summarized by the following points:

1. Prior to issuance of a certificate of a water right in an amount in excess of 15,000 acre feet to a state or federal agency, the chief engineer shall publish in the Kansas Register the information used to make determinations under K.S.A. 82a 711-714.
2. Junior and senior water right holders within the affected area shall be given 120 days from the date of publication of the information in 1 to challenge the findings.
3. If the junior and senior water right holders seek to challenge the proposed certificate, they shall be given a hearing before a hearing officer – like other reviews of orders of the chief engineer – and may appeal to district court.

House Agriculture Committee  
March 12, 2001  
Attachment 4

4. This law shall be retroactive to include all certificates issued on or before January 1, 2000.

In short, certificates issued on or after this date that meet the requirements of Number 1 may be reviewed and challenged by junior and senior water right holders before the hearing officer and district court.

If permit #2427 is allowed to stand it becomes senior to the majority of the water rights located both up and down stream from the drop point and would impair the ability of those users to implement their water permits. I have several of those permits which Ward Feed Yard has utilized for over 35 years. In addition I have water rights which would be senior to #2427 and I have a deep concern that they may also be impaired if this right is utilized. The area this right covers has been under a new development moratorium for water rights for the last several years. This in itself would indicate a lack of available water in the area.

Common sense sometimes takes a back seat in legal proceeding, but in this case, one would have to question why a permit that was applied for April 9, 1954 could not be approved until the 15<sup>th</sup> of August 2000. This is not a standard which would be applied to any individual water user.

In the interest of time I will not present the irregularities that have surfaced in this approval. You may review those in the written testimony of Richard Boeckman of Great Bend. I will only say that I would urge you to look favorably on #2561, which seeks only to have an open hearing of this approval so the facts regarding it may be discussed and also establish a process of appeal for those who may feel it was not in order. The alternative is letting an agency order stand which benefits another state agency with out benefit of review from anyone else.

Thank you for your time.

## PRESENTATION RE: DUNDEE MATTER

Mr. Chairman, Members of the Committee:

I am Richard Boeckman. I am an attorney in private practice in Great Bend. Part of my practice involves representing clients concerning water rights' issues. Among my present clients are a group of water users in Barton and Pawnee Counties who are concerned about the certification of Permit No. 2427. Permit No. 2427 is a surface permit held by Kansas Department of Wildlife & Parks. That surface permit enables Wildlife & Parks to divert water from the Arkansas River from a dam at Dundee through a ditch, into the Wet Walnut Creek, and then into another ditch where the water finally ends up in the Cheyenne Bottoms. Wildlife & Parks also has a surface permit on the Wet Walnut Creek. The water from the Wet Walnut and the Arkansas River mingle, and Wildlife & Parks does not have an ability to distinguish Wet Walnut water from Arkansas River water as the water flows into the Cheyenne Bottoms.

Although Wildlife & Parks filed an application to appropriate water in 1954, in early 2000 the permit still had not been certified. In the Spring of 2000 some of my clients began to hear rumors that the certification would occur. These clients knew the history of the IGUCA water hearings on the Walnut Creek in which the water users in Walnut Valley were restricted, in some cases significantly, in their use of water in an attempt to increase stream flow in the Walnut Creek, thereby providing more water to the Cheyenne Bottoms. Likewise, they have seen what has occurred on the Rattlesnake Creek. The Rattlesnake flows into the Quivira Wildlife Refuge, and water users in the Rattlesnake Creek area are concerned that their water usage will be curtailed so as to increase stream flow in the Rattlesnake. Since Wildlife & Parks' application was for 30,000 acre-feet of water,

certification in that amount, if the certification was enforced, could lead to disastrous results to the water users upstream from the Dundee structure.

To assist my clients I started doing some research concerning the certification of Permit No. 2427. I filed an open records' request with the chief engineer, Division of Water Resources. That request resulted in my obtaining from Division of Water Resources the file for Permit No. 2427. That file shows that Wildlife & Parks made an application for 30,000 acre-feet on April 8, 1954. DWR filed an approval of the application on July 7, 1954, and Wildlife & Parks was given until December 31, 1958, to perfect its permit. Thereafter, there were several requests filed by Wildlife & Parks to extend the time to certify, and the time to certify was extended through December 31, 1962. The materials I received in response to the open records' request indicated no further extension requested and no further extension granted.

The bulk of the file contains various water-use reports. Of interest is an October 21, 1980, letter written by the then area game manager of the Cheyenne Bottoms, Stan Wood. For the convenience of the committee I'm attaching a copy of that letter as Exhibit 1. Wildlife & Parks admits the Arkansas River diversion channel flow meter malfunctions many times, resulting in erroneous readings. There is no accurate study to determine the water loss between the Arkansas River dam and the drop structure, the drop structure being located where the water enters the Cheyenne Bottoms. Mr. Wood's letter contains a table showing supposed diversion of water. Comparing the statements made in that letter with actual water-use reports is of great interest. Attached as Exhibit 2 is a comparison of Mr. Wood's figures in his table to actual water usage reports as derived from a review of DWR's file. As the members of the committee may



know, water users are supposed to submit water reports annually, and the failure to do so can result in the chief engineer instituting abandonment proceedings against the water user. The actual water-use reports contained in the open records' file show that Wildlife & Parks did not submit water-use reports for many years, particularly years 1964 through 1969.

The fact that water-use reports were not submitted in those years is extremely important because Division of Water Resources is using 1966 as the year of record. At a meeting in Larned last November, Mr. Hunsinger from DWR made a presentation which one of my clients videotaped. I've had a chance to review the videotape several times. Highly summarized, Mr. Hunsinger stated that 1966 was the year of record and the perfection period was 1957 to 1967. Attached as Exhibit 3 is a handout provided by Mr. Hunsinger at Larned so indicating. It appears from the testimony of Mr. Hunsinger that DWR looked at water reported at the drop structure, then attempted to distinguish between Wet Walnut water and Arkansas River water, and then through some process arrived at the figure of 18,135 acre-feet. This was all done in the absence of water-use reports from the Kansas Division of Wildlife & Parks.

I represent the occasional small water user who runs afoul of DWR. I'm presently representing a small farmer from Ensign who bought two irrigated circles on the Arkansas River west of Dodge City. Unfortunately, his predecessor in interest had not done a very good job in filing his water-use reports, and the chief engineer initiated abandonment proceedings against my client. Thereafter, the chief engineer dropped the abandonment proceedings but then certified my client's water usage at 3.2 acre-feet, which is essentially meaningless for a center pivot irrigation system. On behalf of my client I filed a petition for

judicial review, and I found the response of the chief engineer to be of great interest when I thought about the situation occurring with Permit No. 2427. The chief engineer's brief is a matter of record in Ford County Case No. 00-C-246. The chief engineer's brief reads in part as follows:

In the case of the application in the matter at hand, the petitioner failed to fulfill his statutory obligations at many junctures in the 22-year period involved. He failed to make beneficial use of the quantity of water that he applied for within a reasonable amount of time to perfect the water right. The perfection of the appropriation is to be limited by the chief engineer, pursuant to K.S.A. 82a-713, which requires a "reasonable period of time" and "expeditious procedure" by the appropriators in completing the process. The period of time deemed reasonable by the chief engineer to perfect a water right was established to be not less than four years, and upon a showing of good cause by the applicant, an extension of time may be granted, but shall not exceed ten years from the date of the application approval (Chief Engineer Policy Memo dated May 16, 1983. Administrative Policy Memo No. 89-9.). The only exception is upon a showing of extenuating circumstances, the burden of proof which is upon the applicant.

The chief engineer certified Permit No. 2427 in August, 2000. This is 46 years after the application was made and 38 years after the last extension was granted. The chief engineer utilizes as the year of record a year in which no water-use reports are made.

To the casual observer it certainly appears that there is a double standard at work here. For a small irrigator in western Kansas the rules are interpreted strictly and enforced rigidly, but for Wildlife & Parks the chief engineer has gone to what I would call heroic efforts to arrive at a certification figure for Permit No. 2427. I say heroic efforts because it appears there are no accurate records to support the certification, and there are certainly no water-use reports to support the certification. Mr. Hunsinger admitted to me in Larned that there are no water-use report records submitted by Wildlife & Parks for 1966.

Admittedly, 18,135 acre-feet is less than 30,000 acre-feet. However, given that

most irrigation wells are for approximately 150-acre feet, 18,135 acre-feet of water still amounts to approximately 120 irrigation wells. My clients, and any other water users who are presently not clients, have expressed concern to me that if the certification for Permit No. 2427 is allowed to stand, they risk substantial curtailment of their water rights. While the Division of Water Resources waited 38 years to certify the permit, there has been considerable appropriation in the Arkansas River Valley between Kinsley and Dundee. Most of the permit holders in the valley are junior to Permit No. 2427. Under the present status of the law, it is not clear whether these water users have the standing to challenge Permit No. 2427. However, it is clear that enforcement of Permit No. 2427 could result in irreparable harm to hundreds of water users along the Arkansas River. Those water users include irrigators, feed lots, municipalities, and industries.

We believe this bill would accomplish several positive results. First, the chief engineer would have to state a factual basis for the certification. Second, affected water users would then have the legal right to challenge that certification. My clients believe this is an important right and, personally, I think that fundamental fairness requires that water users affected by the certification Permit No. 2427 38 years late should have the right to challenge that certification.

Thank you for the opportunity to make this presentation.

# Kansas Fish & Game

BOX 54A, RURAL ROUTE 2, PRATT, KANSAS 67124  
(316) 672-5911

## REGIONAL OFFICES:

Northwest Regional Office  
2204 Vine  
Hays, Kansas 67601

Northcentral Regional Office  
Box 489, 511 Cedar  
Concordia, Kansas 66901

Northeast Regional Office  
3300 S.W. 29th Street  
Topeka, Kansas 66614

Southwest Regional Office  
808 Highway 56  
Dodge City, Kansas 678

Southcentral Regional Office  
Box 764, 204 West Sixth  
Newton, Kansas 67114

Southeast Regional Office  
222 West Main Building  
Suite C & D  
Chanute, Kansas 66720

October 21, 1980

Mr. Bruce W. Frisbie  
Water Commissioner  
105 North Main  
Stafford, KS 67578

Dear Bruce:

I have been able to locate most of the information you requested. Explaining the data, however, is difficult and in many cases impossible.

I was not aware of the necessity of distinguishing between Wet Walnut Creek water and Arkansas River water being diverted to Cheyenne Bottoms in our water use reports. This problem resulted from my reporting to the Pratt administrative staff the water use on the area not fully understanding what information was needed. The Pratt administrative staff then passed along to your agency some misinformation.

Currently it is impossible to determine the individual amounts of Wet Walnut Creek water, Dry Walnut Creek water and Arkansas River water being diverted into Cheyenne Bottoms when all three are contributing to the diverted flow at the same time. No means currently exists to measure just Dry Walnut Creek water diverted to Cheyenne Bottoms. In fact, as you know, Kansas Fish and Game does not possess a water appropriation right for Dry Walnut Creek water. No means currently exists to measure just Wet Walnut Creek water diverted to Cheyenne Bottoms. Therefore, the necessity to estimate Wet Walnut Creek diverted water occurs. The Arkansas River Diversion Channel Flow Meter has malfunctioned many times over the years giving erroneous readings, resulting in the necessity for estimates during those years. There has never been a study to determine the water loss between the Arkansas River Dam and the Drop Structure. Substantially less water reaches Cheyenne Bottoms than is being diverted at the Arkansas River Diversion Dam. Another complicating factor is that many times water has been diverted from the Arkansas River, circulated through the diversion system and allowed to go past the Wet Walnut Diversion Dam back to the Arkansas River. Although this water was diverted it was not utilized at all or was not fully utilized in the marsh.

The only measurement that has a high degree of reliability, year after year, is the measurement of diverted water at the drop structure. The drop structure water measurement is the total diverted water reaching that point and does not distinguish between water diverted from the three different watersheds from which we can get controlled flows when water is available.

OCT 28 1980

FIELD OFFICE  
DIVISION OF WATER RESOURCES  
STAFFORD

Exhibit 1

5-6

Listed below are the data on diverted water into Cheyenne Bottoms that I was able to derive from records on file here as well as records in Pratt and information you provided. Our water records are on a calendar year, not the water year that U.S.G.S. utilizes. There are discrepancies, some of which I can explain if needed.

Table 1. Cheyenne Bottoms Water Diversion Records

Year	Acre Feet of Diverted Water at Drop Structure	Acre Feet of Diverted Water at Arkansas River	Acre Feet of Diverted Water at Wet Walnut Creek
1953	No Records	Not Applicable	No Records
1954	No Records	Not Applicable	4,953.9
1955	19,400	Not Applicable	No Records
1956	No Records	Not Applicable	No Records
1957	No Records	No Records	No Records
1958	No Records	No Records	No Records
1959	2,990.5	3,378.49	No Records
1960	No Records	12,000 ( ? )	1,200 (estimated)
1961	No Records	10,000 (estimated)	4,000 (estimated)
1962	No Records	6,063 (metered)	4,500 (estimated)
1963	15,127	21,252.3 (metered)	6,000 (estimated)
1964	11,719	28,791.7 (metered)	12,000 (estimated)
1965	8,847	No Records	10,000 (estimated)
1966	16,083	42,384.9 (metered)	15,000 (estimated)
1967	13,164	49,898.8 (metered)	15,000 (estimated)
1968	21,878	57,322.5 (metered)	15,000 (estimated)
1969	6,887	35,892.3 (metered)	15,000 (estimated)
1970	11,720	70,801.4 (metered)	15,000 (estimated)
1971	13,168	25,000 (estimated)	15,000 (estimated)
1972	38,884	23,900 (estimated)	15,000 (estimated)
1973	1,215	6,827.1 (metered)	15,000 (estimated)
1974	8,631	12,659.7 (metered)	15,000 (estimated)
1975	3,247	3,273 (estimated)	15,000 (estimated)
1976	17,831	19,342 (estimated)	15,000 (estimated)
1977	14,335	25,750 (estimated)	15,000 (estimated)
1978	14,800	11,549.2 (estimated)	15,000 (estimated)
1979	16,249	16,718.8 (metered)	15,000 (estimated)
1980-10/1/80	9,782	14,703.1 (metered)	(estimated)

There are several points I would like to make in regards to our water needs at Cheyenne Bottoms Wildlife Area:

1. Because of the emergent vegetation problem that has developed on Cheyenne Bottoms, there is a need to have more water on the marsh to attempt to control the emergent vegetation with deep water. This need is occurring at a time when there is less water available. A marsh that is in an advanced successional stage will require more water, to set back the successional stage to a more productive condition, than a marsh that is in an early successional stage.
2. Diverted water needs on Cheyenne Bottoms are affected by the amounts of unregulated water flows into the area. There have been times when Blood Creek, Deception Creek and local runoff have supplied much of the water needed for management of the areas during periods of some years.
3. I am confident that Kansas Fish and Game could fully utilize their appropriated water rights most years if the water was available when needed. Our water needs seem to be inversely related to the water supply.

The pump station you inquired about has 2 pumps, each of which can pump 100 to 105 acre feet of water per day at maximum capacity. Each Waukesha engine that drives the pumps produces 114 hp at 1400 rpm.

Enclosed is a copy of the daily record kept of diverted water inflows that reach the drop structure for this year to date. The zero readings for September and October are the result of no water available rather than no water being diverted.

The basis for the estimates on the diverted flows from the Wet Walnut Creek is difficult if not impossible to determine. I suspect the estimates are very inaccurate for several of the years. I could review the records maintained of drop structure readings for all years we have records and refine the estimates, particularly for recent years, if needed.

Sincerely,



Stan Wood  
Area Game Manager  
Cheyenne Bottoms Wildlife Area  
R.R. #1, Great Bend

SW:ck

cc: Joe Kramer  
Bill Peabody  
Walt Harrison



**Actual water use report**

1959 3478.5 AF  
 1960 12000 AF  
 1961 10000 AF  
 1962 6062 AF  
 1963 21,253.3 AF  
 1964 NR  
 1965 NR  
 1966 NR  
 1967 NR  
 1968 NR  
 1969 NR  
 1970 70,802  
 1971 25000 (Est.) (Natural loss thru Evap. + S)  
 1972 23,900 (Est.) (Natural loss thru Evap. + S)  
 1973 6827 (Est.) (Natural loss thru Evap. + S)  
 1974 NR  
 1975 3273 est  
 1976 NR  
 1977 14335 (esf diverted into basin)  
 1978 14800  
 1979 16250 (esf diverted into basin)  
 1980 14703  
 1981 4992 esf  
 1982 NR  
 1983 NR  
 1984 6201  
 1985 NR  
 1986 4645  
 1987 10612  
 198 NR  
 1989 4457  
 1990 5224  
 1991 No use  
 1992 No use  
 1993 No use  
 1994 No use  
 1995 No use  
 1996 2.4  
 1997 2  
 1998 3536

**Woods 10-21-80 letter**

3478.49 AF  
 12000 AF  
 10,000 (estimated)  
 6063 AF  
 21,252.3 [15127]  
 28791.7 [28791.7]  
 NR  
 42384.9  
 49898.8  
 57322.5  
 38892.5  
 70801.4  
 25000 (est)  
 23,900  
 6827.1  
 12659.7  
 3273  
 19342  
 25750  
 11549.2  
 16718.8

Cheyenne Bottoms Water Rights

File No.	Point of Diversion	Priority Date	Perfection Period	Quantity(AF)	Rate(cfs)
439	Walnut Creek	10/8/48	Certified(9/13/1990)	19,175	500
2,427	Arkansas River	4/9/54	Certified(8/15/2000)	18,185	80
39,789	Blood Creek	12/4/89	12/31/2003	9,375	Nat'l flow
40,081	Deception Creek	10/3/90	12/31/2003	2,905	Nat'l flow
Total quantity				49,640	
39,951	Dry Walnut Creek	4/16/90	Application pending	6,000	Nat'l flow

The place of use is all pools in Cheyenne Bottoms for all water rights.

The type of use is recreation.

Year of record: Arkansas River, 1966; Walnut Creek, 1955

Reasonable Quantity

Capacity of Cheyenne Bottoms at the outlet elevation of 1,794.5 feet	29,985 ac-ft
Estimated evaporation at 31 inches/year per acre (surface area 12,290 acres)	31,749 ac-ft
Estimated seepage at 12 inches/yr per acre	12,290 ac-ft
Total average annual water used	44,039 ac-ft
Estimated annual quantity needed for proper management	61,000 ac-ft

TESTIMONY PRESENTED TO  
KANSAS STATE HOUSE OF REPRESENTATIVES AG COMMITTEE  
2-12-01

My name is Marian Mull from Larned, Kansas. I am the granddaughter of German immigrants that began farming in the Pawnee Rock community 120 years ago. I personally knew the man who broke out the prairie on the farm where I was born. He used a two-horse breaking plow. August alternated teams each day to rest the horses but he only had one day of rest each week. That farm is one mile north of the Arkansas River and has been in our family since 1908.

Dryland farming in our area could be called "hit or miss." It wasn't until the late 1950's, when we developed irrigation, that we could plant crops with reasonable assurance that a crop would be harvested. On our farm, irrigation provided a constant source of feed so that we were able to diversify from just growing wheat to other crops including corn, sorghum and alfalfa. That irrigation use of water has not come without regulation and oversight. We were unable to develop several tracts of land within the perfection period during the 1980's due to the economy of the time. Those application files were cancelled when the perfection period expired. Furthermore, we have several wells that were officially tested many years after the perfection period passed. Due to several factors they were not pumping as much as they had been earlier in their life. Because of this reduction we were unable to establish rights for the full amount that had been applied for.

We have, at our own expense, installed and maintained water meters. Our annual reports to the Division of Water Rights (DWR) are necessary and required by law to maintain what rights we do have. Generally our water cannot be moved from one tract of land to another. If a well goes bad we are restricted in how far we can shift that well location.

Other uncertainties exist in our system. Today the Conservation Reserve Program has taken a significant number of acres out of farming and some from irrigation. A provision exists to maintain that right during the CRP contracts. I am unsure of what will happen after the CRP contract has expired. What will happen to these rights if they are not used for years? Does lack of use constitute a basis for revocation of water rights? We are told by DWR that it does.

Our family considers ourselves blessed and furthermore thanks the State of Kansas for the use of its water. I came today not to complain about the system we are working within, but to encourage this committee to exercise your oversight capability and responsibility. Therefore, I fervently request your support of #2561.

# STATE OF KANSAS

BILL GRAVES, GOVERNOR  
Jamie Clover Adams, Secretary of Agriculture  
109 SW 9th Street  
Topeka, Kansas 66612-1280  
(785) 296-3558  
FAX: (785) 296-8389



Division of Water Resources  
David L. Pope, Chief Engineer  
109 SW 9th Street, 2nd Floor  
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(785) 296-3717 FAX (785) 296-1176

## KANSAS DEPARTMENT OF AGRICULTURE

### House Committee on Agriculture

March 12, 2001

### Testimony Regarding House Bill 2561

David L. Pope, Chief Engineer  
Division of Water Resources, Kansas Department of Agriculture

Chairperson Johnson and members of the committee, thank you for the opportunity to present testimony regarding House Bill 2561. My name is David L. Pope, and I appear in opposition to this bill on behalf of the Kansas Department of Agriculture.

House Bill 2561 requires specific administrative procedures to be completed prior to the issuance of any certificate of appropriation in an amount in excess of 15,000 acre feet of water for certain governmental bodies. The procedures include: (1) publishing the criteria in the Kansas register that must be met before a certificate of appropriation may be issued, (2) provide a 120-day opportunity for anyone lawfully diverting from the same source of supply to object to the certificate, (3) hold a hearing on any objections, and (4) deny the certificate if objections are found to be valid by the chief engineer. Any certificates in excess of 15,000 acre feet of water that were issued after January 1, 2000 would also be subject to these requirements, and if the objections were found to be valid, the certificate would be declared void.

In order to help you understand this bill, let me briefly describe the process to receive a permit to appropriate water for beneficial use and ultimately, a certificate of appropriation. A permit authorizes the diversion of water within prescribed limits, including a maximum quantity and rate of diversion. At the time an application is approved, it is determined if the proposed beneficial use is reasonable, will not impair existing water rights and will not prejudicially and unreasonably affect the public interest. The applicant is authorized to construct the diversion works and put the water to beneficial use, so long as it does not impair a prior right. The certification process is designed to quantify or determine the extent to which a water right has been perfected by actual use of water within the limits of the permit, based on a factual review of how much water was diverted during a maximum year of record.



Our water rights records indicate that there have been 18 appropriation rights certified to date with an amount of water in excess of 15,000 acre feet. While limited in number, a few appropriation rights held by the entities covered by this bill are in the process of perfection and would likely meet the requirements of this bill in the future. Only one of the 18 certificates was issued after January 1, 2000 that would fall within the requirements of this bill. This certificate is for diversion of water from the Arkansas River to the Cheyenne Bottoms wetlands. The Cheyenne Bottoms wetlands is a state owned and managed area in the Walnut Creek drainage basin that diverts water from the Arkansas River and transports it by canals to the wetlands. There is also an appropriation from the Wet Walnut Creek which has a certificate of appropriation. Since this bill appears to be aimed at the Cheyenne Bottoms certificate, let me describe the water right and process used to certify it.

The certificate of appropriation (File No. 2,427) from the Arkansas River for Cheyenne Bottoms was certified for a quantity not to exceed 18,185 acre feet to be diverted at a rate not to exceed 80 cubic feet per second. The application for this water right was received by the division of water resources on April 9, 1954, which established the priority date. The permit to divert water for recreational use was approved July 7, 1954, for 30,000 acre feet. Final diversion works were completed August 23, 1957, and the perfection period expired December 31, 1967. The amount of time to perfect the water right was not uncommon compared to other water rights acquired during the time period in question, especially given the extensive nature of the project and time necessary to complete the diversion works. In 1991, major construction and renovation of the area was completed. A final inspection was conducted on April 9, 1999, prior to certification and a draft certificate was sent to the Kansas Department of Wildlife and Parks for review. The certificate was issued August 15, 2000, and 30 days were allowed for an appeal, but none was filed. A letter from Big Bend Groundwater Management District No. 5 was received on February 22, 2000, requesting that a flow meter be installed. Water meters had already been required and some enhancements are being considered. Two other letters were received from an attorney during this time frame requesting information and providing comments on behalf of unnamed irrigators expressing concerns about the quantity of water on the certificate.

Some water users have questioned the operation of Cheyenne Bottoms and the records available to determine the perfection of its water right. During the 1960's when the Cheyenne Bottoms water right was perfected, very few water users were using water meters to measure their use. In general, estimates of use typically were based on the amount of time the well or pump was operated. Water use reports were sometimes not filed. In contrast, an actual measurement of water diverted into Cheyenne Bottoms was kept for most of the perfection period. However, it is a complex operation with several sources of water diverted and delivered long distances. Since measurements were historically not made at all locations in this system, we did what we do in other similar cases and used all available records, including data from the USGS gages. We were able to determine how much water was diverted from the Arkansas River during each of the four potential years of record. I am confident that the amount certified represents a reasonably accurate quantity of water and well within the range of accuracy used for the perfection and certification of many other water rights for irrigation and other uses during the same period.



The KDA has some serious concerns about this bill. It would require that the Cheyenne Bottoms certificate be reviewed through an after the fact public hearing process. Once water is diverted under an appropriation right, it becomes a real property right. The certificate of appropriation is the document that quantifies the water right and it is ultimately recorded in the office of the register of deeds in the county where the point of diversion is located. If the certificate were to be voided, there would likely be a question about whether this action would result in a taking of private property in violation of the state and federal constitutions. It is particularly troubling that it targets only a minor portion of the water user population, that being large public users. I question whether it would be good policy to set a precedence that one type of water right can be subjected to a different type of process than other uses.

As to public involvement, at the time the application for permit is being processed, the division of water resources provides notice and an opportunity for comment to adjacent land owners and others who have an interest in new water appropriations and addresses concerns at that time. This public review is prior to water being appropriated and before any investment or commitment is made by the applicant. If there are valid objections, they can and should be resolved at that time.

I do not believe the intent of the certification process is to provide another opportunity to re-determine these factors, as it would be unfair to do so after the investment has been made and the water right has been perfected. Again, the purpose of the certification process is to make a factual determination of the amount of water used with the limits of the permit.

In the case of Cheyenne Bottoms, substantial diversion works were constructed across the main channel of the Arkansas River to control and redirect some of the flow into a large system of canals and other control structures that transport the water to the wetlands. These control structures were constructed at substantial public expense in order to transport and properly manage these large quantities of water to the wetlands. In this case, the chief engineer determined the rate and quantity of water that was available to appropriate for Cheyenne Bottoms in 1954, and the water right was perfected in the 1960's. It would not seem appropriate to question the need for these large public investments after they have been issued a permit and have been allowed to develop their beneficial use within the limits of their permit and in accordance with the law at the time.

In addition to the impact on the Kansas Department of Wildlife and Parks water right at Cheyenne Bottoms, this bill would apparently impose these requirements in the future on the federal government or the state of Kansas, or instrumentality thereof, that had a water right of this size. Examples of these would be public water supplies, operated by cities or water districts, large irrigation districts, and any other public entity that would operate a large water management project in the future. We question whether this bill provides any significant benefit and protection to the public.

I am aware that some other water right holders in the area are concerned about certification of the water right for Cheyenne Bottoms, since it is a very senior right, and there is the potential during times of shortage for it to effect persons with more junior water rights if there

is not enough water to satisfy all rights to that source of water. However, I do not believe it is appropriate to establish a special process that may result in the voiding of an otherwise lawfully established water right.

Thank you for the opportunity to provide testimony in this matter. I will be glad to answer any questions you may have.



STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

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900 SW Jackson, Suite 502  
Topeka, KS 66612-1233  
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**HOUSE BILL NO. 2561**

**Testimony Provided to  
House Committee on Agriculture  
March 12, 2001**

House Bill No. 2561 would impose new requirements for the certification of appropriation for water rights exceeding 15,000 acre feet held by certain public entities. The Kansas Department of Wildlife and Parks (KDWP) provides this testimony in opposition to HB 2561 for following reasons.

As we understand it, HB 2561 would impact only one certificate of appropriation, and in fact would impact that certificate retroactively. In August of 2000, the Division of Water Resources (DWR) issued a certificate of appropriation to KDWP for the diversion of water from the Arkansas River for use at the Cheyenne Bottoms Wildlife Area, a wetlands area of international importance. This certificate was issued only after more than a year of meetings and exchange of information between DWR and KDWP, to determine the appropriate amount for this water right.

For the Committee's background information, the original application for this water right had been filed in 1954, and the permit to divert the water was approved at that time for 30,000 acre feet. The perfection period closed in 1967, but the certificate of appropriation had not been issued. In 1999, KDWP provided data at DWR's request for water use pursuant to this water right, focusing on the water use during the perfection period. Although records from that era are not as exact as current metered measurements, water use records were kept at that time, and we provided these records to DWR. After a lengthy review, DWR informed KDWP that the records indicated our water right had been perfected at a quantity of 18,125 acre feet, a substantial reduction from the original amount of 30,000 acre feet, and DWR issued a certificate of appropriation in that amount. KDWP did not appeal that finding.

Given the requirements that DWR correctly imposed on KDWP in order to establish an amount for the certificate of appropriation, our agency is concerned that HB 2561 seems to have no discernable purpose other than to challenge that certificate. If so, we would question the wisdom and precedent of applying retroactive procedures to select water rights.

More important, KDWP would have serious concerns if this process leads to any further reduction in appropriation amount of this particular water right. Cheyenne Bottoms serves as one of the most important wetlands in the Central Flyway, attracting waterfowl, migratory shorebirds, and endangered species. A major renovation of the area's water management systems was

House Agriculture Committee  
March 12, 2001  
Attachment 8

recently completed at a cost of over \$18 million, funded by state, federal and private dollars, in recognition of the value of these wetlands to citizens of Kansas and to all of North America. These renovations allow water to be pumped and stored to better ensure efficient use of the available water, and decrease the need for as much water diversion from the Arkansas River. Nonetheless, the river provides the most dependable source of water for the wetland, and any further reduction in the allowable appropriation would fly in the face of this substantial public investment.

We understand that, due to competing priorities, it is not uncommon for issuance of a certificate of appropriation to be delayed many years after close of the perfection period. In the case of this water right, we believe this may have been to the detriment of Cheyenne Bottoms. If KDWP had known that our certificate would have been reduced to 18,125 acre feet, we may have been able to file for additional water rights available at the close of the perfection period; however, any such opportunity has long since passed by. Nonetheless, our agency recognizes that our water right was treated equally to those of other water users, and therefore respects the appropriateness of the certificate. Consequently, we oppose HB 2561 and its apparent attempt to challenge that process.

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HOUSE BILL No. 2468

By Committee on Agriculture

2-9

House Agriculture Committee  
March 12, 2001  
Attachment 9

9 AN ACT enacting the land stewardship and productivity act; amending  
10 K.S.A. 2-1321 and 19-211 and K.S.A. 2000 Supp. 2-1314, 2-1318, 2-  
11 1319, 2-1320, 2-1322 and 2-1323 and repealing the existing sections;  
12 also repealing K.S.A. 2-1315, 2-1316a, 2-1317, 2-1324, 2-1325, 2-1326,  
13 2-1327, 2-1328, 2-1329 and 2-1330 and K.S.A. 2000 Supp. 2-1316, 2-  
14 1331 and 2-1332.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. (a) This act shall be known and may be cited as the  
18 land stewardship and productivity act.

19 (b) The purpose of this act is to establish a program [whose goal] is to  
20 eradicate noxious weeds on public and private land and thereby protect  
21 the [viability of the agricultural economy and natural resources of Kansas].

the goal of which

22 New Sec. 2. As used in this act:

state's natural and cultivated resources

23 (a) "Association of persons" means any organization, corporation or  
24 other entity that has legal responsibility for the ownership, management,  
25 control or supervision of land.

26 (b) "Competent in weed control and management" means the indi-  
27 vidual meets the requirements set forth in rules and regulations of the  
28 secretary.

delete

29 (c) "Containment category" is the category of noxious weeds growing  
30 on less than 100 acres in a county and having the potential to be contained  
31 and possibly eradicated in that county.

32 (d) "Control" means preventing the production of viable seed and  
33 destroying the plants ability to reproduce by vegetative means [both] in  
34 conformity with the official control plan for that particular noxious weed.

35 (e) "Governmental unit" means a political subdivision or those su-  
36 pervising state-owned land.

37 (f) "Foreign weed category" is the category of noxious weeds not  
38 identified as growing in Kansas at the time they are declared by the sec-  
39 retary by rule and regulation to be noxious but that pose a threat to Kansas  
40 requiring immediate control if the noxious weeds were found to be grow-  
41 ing in Kansas.

42 (g) "Management" means the planning and implementation of a co-  
43 ordinated program for the containment, suppression and, where possible,

9-2

1 eradication of noxious weeds.

2 (h) "Management category" means the category of noxious weeds  
3 identified as growing on more than 100 acres in a county and the eradi-  
4 cation of which is not biologically feasible. Management category shall  
5 include the primary management subcategory and secondary manage-  
6 ment subcategory.

7 (i) "Noxious weed" other than foreign weed means any plant declared  
8 by the legislature to be noxious.

9 (j) "Primary management subcategory" is the category of noxious  
10 weeds growing on more than 100 acres in the county but on less than  
11 10,000 acres statewide and the eradication of which is not biologically  
12 feasible.

13 (k) "Responsible party" means a person, association of persons, a gov-  
14 ernmental entity, a railroad, an airport authority or those supervising  
15 state-owned land, any of whom own, manage, control or supervise land.

16 (l) "Secondary management subcategory" is the category of noxious  
17 weeds growing on more than 100 acres in a county and more than 10,000  
18 acres statewide and the eradication of which is not biologically feasible.

19 (m) "Secretary" means the Kansas secretary of agriculture.

20 (n) "Those supervising state-owned land" means the ultimate legal  
21 authority of the subdivision of state government having responsibility for  
22 the management, control or supervision of state land.

23 (o) "Weed director" means a person employed by the county or city  
24 and competent in weed control and management.

25 New Sec. 3. (a) Each responsible party shall control and manage, in  
26 accordance with the rules and regulations adopted by the secretary, any  
27 noxious weed on any land owned, managed, controlled or supervised by  
28 any such responsible party.

29 (b) The secretary, a designee of the secretary, any weed director or  
30 other public official is authorized to inspect any property, both public or  
31 private, at any reasonable time to administer this act.

32 (c) Each responsible party shall provide free access and entry upon  
33 any premises owned, managed, controlled or supervised by the respon-  
34 sible party so that the secretary, a designee of the secretary, any weed  
35 director or other public official who administers this act may inspect any  
36 property, both real and personal, at any reasonable time.

37 New Sec. 4. The secretary shall establish ~~or adopt~~ by rules and reg-  
38 ulations an official control plan for each noxious weed. Any person may  
39 request that the secretary consider a control or management practice not  
40 included in an official control plan.

delete

41 New Sec. 5. The number of acres of a noxious weed found growing  
in each county shall determine the classification of a noxious weed. The  
classification categories are as follows:

9-3

- 1 (a) Foreign weed category;
- 2 (b) containment category; or
- 3 (c) management category:
- 4 (1) Primary management subcategory; or
- 5 (2) secondary management subcategory.
- 6 New Sec. 6. The secretary is authorized to:
- 7 (a) Adopt official methods for the management of noxious weeds and
- 8 to publish such methods;
- 9 (b) adopt rules and regulations as in the judgment of the secretary
- 10 are necessary to carry out the provisions of this act, and to alter or suspend
- 11 such rules and regulations when necessary; and
- 12 (c) enter into agreements and to cooperate with other governmental
- 13 entities, including the federal government, to administer this act.
- 14 New Sec. 7. (a) The board of county commissioners of each county
- 15 shall, and the governing body of any city may, employ a weed director.
- 16 (b) The board of county commissioners of each county and the gov-
- 17 erning body of any city that employs a weed director shall:
- 18 (1) Prepare an annual report. The annual report shall be in the form
- 19 and contain the information required by the secretary in rules and reg-
- 20 ulations. The annual report shall be submitted to the secretary by Feb-
- 21 ruary 15 and cover the preceding calendar year. The annual report shall
- 22 include the weed director's certification of the following:
- 23 (A) For each financial incentive paid, an authorized control method
- 24 was applied on all land identified in the annual report as being infested
- 25 with noxious weeds in the containment category and primary manage-
- 26 ment subcategory; or
- 27 (B) for each financial incentive paid, an authorized control method
- 28 was applied on land identified in the annual report as being infested with
- 29 noxious weeds in the secondary management subcategory. Certification
- 30 under this paragraph may include a scientifically representative sample
- 31 of the land infested with noxious weeds in the secondary management
- 32 subcategory for which a financial incentive was provided and is not re-
- 33 quired ~~[to be a certification] for all land in such subcategory.~~
- 34 (2) Cooperate with the secretary in implementing the provisions of
- 35 this act.
- 36 (3) Prepare a weed management plan. The weed management plan
- 37 shall contain the activities to be conducted during the upcoming calendar
- 38 year to detect, monitor and control any noxious weed found growing in
- 39 the jurisdiction. The weed management plan shall be submitted to the
- 40 secretary by June 1 of each year.
- 41 (4) Establish a procedure to provide a financial incentive to a re-
- 42 sponsible party for the control and management of noxious weeds on a
- 43 substantiated and measurable basis. In no event shall a governmental

All rules and regulations of the department of agriculture or the secretary of agriculture related to noxious weeds in existence on the effective date of this act shall continue to be effective until revised, amended, revoked or nullified pursuant to law

delete

7-4

1 entity or government employee obtain a financial incentive to control  
2 noxious weeds on government land.

3 (5) Provide a financial incentive for the control and management of  
4 noxious weeds on a substantiated and measurable basis to a responsible  
5 party who pays to control and manage weeds in accordance with this act  
6 on private property in the containment category or the primary manage-  
7 ment category.

from a county or a city

8 (6) Specify practices contained in the official control plan for each  
9 noxious weed present in the county or city for which a financial incentive  
10 shall be provided and identify what financial incentives, if any, the gov-  
11 ernmental entity shall provide for each control practice identified and  
12 what substantiated and measurable basis such financial incentive is  
13 provided.

14 (7) Provide a grievance system, established in the rules and regula-  
15 tions of the secretary, allowing landowners or members of the public to  
16 complain about noxious weeds growing on another's land.

17 (8) Be subject to review and audit by the secretary, and shall make  
18 all its books and records pertaining to this act available for inspection  
19 upon request of the secretary.

20 (9) Ascertain the approximate acreage infested with each kind of nox-  
21 ious weed in the governmental entity's jurisdiction. This information shall  
22 be reported by June 1 of each year to the county, and any city or township  
23 within the county's boundaries.

24 (c) The board of county commissioners of each county and the gov-  
25 erning body of any city that employs a weed director, in cooperation with  
26 the weed director may:

27 (1) Provide a financial incentive on a substantiated and measurable  
28 basis to a responsible party who pays to control and manage weeds in  
29 accordance with this act on private property in the secondary manage-  
30 ment subcategory.

31 (2) Offer for sale any product or material identified in the official  
32 control plan. The price for products or materials offered for sale shall be  
33 determined by the following formula: Price of product or material paid  
34 by the county or city plus any storage or handling amount minus the  
35 financial incentive.

36 New Sec. 8. (a) At least annually, the board of county commissioners  
37 of each county and the governing body of any city that employs a weed  
38 director shall give the public general notice in the official county or city  
39 newspaper of all noxious weeds identified by the weed director as growing  
40 in the geographic area for which the weed director is responsible. The  
41 notice to the general public shall follow the requirements adopted by  
42 rules and regulations of the secretary.

43 (b) The board of county commissioners of each county and the gov-



1 erning body of any city that employs a weed director, in cooperation with  
2 the weed director, shall attempt to develop, or cause to be developed, an  
3 individual noxious weed management plan with a responsible party for  
4 land infested with noxious weeds in the containment category or primary  
5 management category. An individual weed management plan shall: (1)  
6 Follow the official control methods for the noxious weed identified on  
7 the land; and (2) specify the time within which the responsible party shall  
8 complete treatment pursuant to an official control method. If a respon-  
9 sible party fails to comply with the provisions of the individual weed man-  
10 agement plan or refuses to enter into an individual weed management  
11 plan, the weed director shall issue a notice as described in subsection (c).

12 (c) The board of county commissioners of each county and the gov-  
13 erning body of any city that employs a weed director shall give notice by  
14 certified mail to a responsible party who fails to comply with the provi-  
15 sions of subsection (b). The notice required by this subsection shall:

16 (1) Contain the procedures described in the official control methods  
17 for the noxious weed identified on the land and a legal description of the  
18 land where noxious weeds are growing.

19 (2) Specify the time within which the responsible party shall complete  
20 treatment pursuant to an official control method. The time for completion  
21 shall not be less than 10 working days after mailing of the notice.

22 (3) Include a statement that unless the responsible party completes  
23 the required noxious weed control and management method within the  
24 time specified in the notice, the weed director may enter or cause to be  
25 entered upon the land as often as necessary to use any approved method  
26 to control and manage the noxious weed identified in the notice.

27 New Sec. 9. In the event the weed director enters upon land to con-  
28 trol noxious weeds, after service of notice pursuant to section 8, and  
29 amendments thereto, the weed director shall notify or cause to be noti-  
30 fied, by certified mail, a responsible party that such party shall pay for  
31 the weed management control performed upon the default of the re-  
32 sponsible party in section 8, and amendments thereto. The notice re-  
33 quired by this section shall include an itemized statement of services and  
34 the statement may include any penalty provided by K.S.A. 2-1323, and  
35 amendments thereto. The board of county commissioners of each county  
36 and the governing body of any city that employs a weed director shall  
37 provide notice and an opportunity for a responsible party aggrieved by a  
38 statement of services or penalties to be heard. Any notice and hearing  
39 shall be conducted in accordance with rules and regulations adopted by  
40 the secretary.

41 New Sec. 10. (a) It shall be the duty of all persons to minimize the  
42 presence of noxious weeds or noxious weed seed in agricultural com-  
43 modities, products or equipment. If a county weed director suspects that

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1 a commodity, product or equipment is infested with noxious weeds or  
2 may contain noxious weed seed, the county weed director shall report the  
3 director's suspicions in a timely manner to the secretary.

4 (b) Any hay obtained by any governmental entity for use as mulch on  
5 public lands or along a public right-of-way shall be certified prior to such  
6 use as being free of noxious weeds. Certification shall be in the form  
7 required by the secretary, and filed with the weed director in the county  
8 where the hay is to be used.

harvest

9 Sec. 11. K.S.A. 2000 Supp. 2-1314 is hereby amended to read as  
10 follows: 2-1314. It shall be the duty of ~~persons, associations of persons,~~  
11 ~~the secretary of transportation, the boards of county commissioners, the~~  
12 ~~township boards, school boards, drainage boards, the governing body of~~  
13 ~~incorporated cities, railroad companies and other transportation compa-~~  
14 ~~nies or corporations or their authorized agents and those supervising~~  
15 ~~state-owned lands~~ a responsible party to control and manage the spread  
16 of and to eradicate all weeds declared by legislative action to be noxious  
17 on all lands owned, managed, controlled or supervised by them and to  
18 use such methods for that purpose and at such times as are approved and  
19 adopted by the department of agriculture secretary. The term noxious  
20 weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus*  
21 *arvensis*), Russian knapweed (*Centaurea repens*), hoary cress (*Cardaria*  
22 *draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*),  
23 leafy spurge (*Euphorbia esula*), bur ragweed (*Ambrosia grayii*), pignut  
24 (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans L.*),  
25 Johnson grass (*Sorghum halepense*) and sericea lespedeza (*Lespedeza*  
26 *cuneata*).

, except that the provisions of this subsection shall not apply to any contract entered into by any governmental entity prior to January 1, 2002

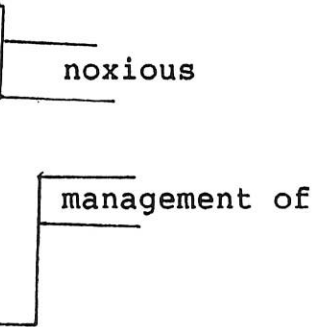
Printer's error: All in lines 20 through 26 were deleted - thus need to reinsert all.

27 Sec. 12. K.S.A. 2000 Supp. 2-1318 is hereby amended to read as  
28 follows: 2-1318. ~~The county weed supervisor of each county is hereby~~  
29 ~~directed and it shall be the duty of the county weed supervisor to ascertain~~  
30 ~~each year the approximate amount of land and highways infested with~~  
31 ~~each kind of noxious weeds and its location in the county, and transmit~~  
32 ~~such information tabulated by cities and townships not later than June 1~~  
33 ~~of each year, to the secretary of the state board of agriculture, board of~~  
34 ~~county commissioners, and to the governing body of each city and town-~~  
35 ~~ship in the district pertaining to such noxious weed infestation in their~~  
36 ~~respective jurisdiction.~~ On the basis of such information the annual report  
37 or weed management plan, the tax levying body of each county, township  
38 or incorporated city shall make a tax levy each year for the purpose of  
39 paying their part of the cost of control and eradication thereof as provided  
40 in to implement this act and, in the case of cities and counties, to pay a  
41 portion of the principal and interest on bonds issued under the authority  
42 of K.S.A. 12-1774, and amendments thereto, by cities located in the  
43 county. Each county, city, and township, separately, shall make a levy

The term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea repens*), hoary cress (*Cardaria draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), bur ragweed (*Ambrosia grayii*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans L.*), Johnson grass (*Sorghum halepense*) and sericea lespedeza (*Lespedeza cuneata*).

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1 each year for such purpose. Any city governmental unit may budget ex-  
 2 penditures for ~~weed control~~ within its general operating fund in lieu of  
 3 levying a special tax therefor or maintaining a separate noxious weed  
 4 eradication fund. Moneys collected from such levy, except for an amount  
 5 to pay a portion of the principal and interest on bonds issued under the  
 6 authority of K.S.A. 12-1774, and amendments thereto, by cities located  
 7 in the county, shall be set apart as a noxious weed eradication fund and  
 8 warrants Warrants duly verified by the county or city supervisor if such  
 9 be weed director, if such weed director is employed or if no supervisor  
 10 be weed director is employed, then by county, township or city clerk, as  
 11 the case may be, may be drawn against this fund for all items of expense  
 12 incident to control of and manage noxious weeds in such district respec-  
 13 tively. Any moneys remaining in the noxious weed eradication fund at the  
 14 end of any year for which a levy is made under this section may be trans-  
 15 ferred to the noxious weed capital outlay fund for making of capital ex-  
 16 penditures incident to the control of noxious weeds governmental unit.



17 Sec. 13. K.S.A. 2000 Supp. 2-1319 is hereby amended to read as  
 18 follows: 2-1319. (a) The cost of controlling and eradicating managing nox-  
 19 ious weeds on all lands or highways owned or supervised by a state agency,  
 20 department or commission shall be paid by the state agency, department  
 21 or commission supervising such lands or highways from funds appropri-  
 22 ated to its use, on county lands and county roads, on township lands and  
 23 township roads, on city lands, streets and alleys by the county, township  
 24 or city in which such lands, roads, streets and alleys are located, and from  
 25 funds made available for that purpose, on drainage districts, irrigation  
 26 districts, cemetery associations and other political subdivisions of the  
 27 state, the costs shall be paid from their respective funds made available  
 28 for the purpose: government land shall be borne by the governmental unit  
 29 responsible for noxious weed control and management within such unit's  
 30 jurisdiction. If the governing body of any political subdivision owning or  
 31 supervising governmental unit that owns or supervises lands infested with  
 32 noxious weeds within their jurisdiction fails to control such noxious weeds  
 33 after 15 10 days' notice directing any such body to do so, the board of  
 34 county commissioners shall proceed to have proper control and eradic-  
 35 tion management methods used upon such lands, and shall notify the  
 36 governing body of the political subdivision governmental unit by certified  
 37 mail of the costs of such operations, with a demand for payment. The  
 38 governing body of the political subdivision governmental unit shall pay  
 39 such costs from its noxious weed fund, or if no such fund is available,  
 40 from its general fund or from any other funds available for such purpose.  
 41 Copy A copy of the statement, together with proof of notification, shall  
 42 at the same time be filed with the county clerk, and if the amount is not  
 43 paid within 30 days, such clerk shall spread the amount due by any po-

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1 *litical subdivision* upon the tax roll of the subdivision, and such amount  
2 shall become a lien against the entire territory ~~located~~ within the partic-  
3 ular political subdivision, and shall be collected as other taxes are  
4 collected.

5 (b) All moneys collected pursuant to this section shall be paid into  
6 ~~the county allocated for noxious weed eradication fund control and man-~~  
7 ~~agement.~~

withhold the appropriate amount due the county  
from the next tax distribution to the political  
subdivision

8 (c) As used in this section *as it pertains to the levy of taxes*, "governing  
9 body" means the board, body, or persons in which the powers of a political  
10 subdivision as a body corporate are vested; and "political subdivision"  
11 means any agency or unit of the state authorized to levy taxes or empow-  
12 ered to cause taxes to be levied.

13 ~~(d) On all other lands the owner thereof shall pay the cost of control~~  
14 ~~and eradication of noxious weeds. Except as provided in K.S.A. 2-1333~~  
15 ~~and amendments thereto, chemical materials for use on privately owned~~  
16 ~~lands may be purchased from the board of county commissioners at a~~  
17 ~~price fixed by the board of county commissioners which shall be in an~~  
18 ~~amount equal to not less than 50% nor more than 75% of the total cost~~  
19 ~~incurred by the county in purchasing, storing and handling such chemical~~  
20 ~~materials. However, once the tax levying body of a county, city or town-~~  
21 ~~ship has authorized a tax levy of 1.5 mills or more, the board of county~~  
22 ~~commissioners may collect from the owner of privately owned lands an~~  
23 ~~amount equal to 75% but not more than 100% of the total cost incurred~~  
24 ~~by the county in purchasing, storing and handling of chemical materials~~  
25 ~~used in the control and eradication of noxious weeds on such privately~~  
26 ~~owned lands. Whenever official methods of eradication, adopted by the~~  
27 ~~state board of agriculture, are not followed in applying the chemical ma-~~  
28 ~~terials so purchased, the board of county commissioners may collect the~~  
29 ~~remaining portion of the total cost thereof.~~

30 Sec. 14. K.S.A. 2000 Supp. 2-1320 is hereby amended to read as  
31 follows: 2-1320. In case the county weed supervisor or city weed super-  
32 visor ~~When a weed director enters upon land or and~~ furnishes weed con-  
33 trol materials pursuant to a contract or an agreement with an owner,  
34 operator or supervising agent of noxious weed infested land for the con-  
35 trol of such noxious weeds and, as a result of such weed control methods,  
36 there are any unpaid accounts outstanding by December 31 of each year,  
37 and management by contract, pursuant to an individual weed manage-  
38 ment plan, or upon refusal of a responsible party to control/weeds, the  
39 county commissioners or governing body of ~~the~~ a city that employs a weed  
40 director shall immediately notify or cause to be notified, such owner re-  
41 sponsible party with an itemized statement as to the cost of material,  
42 labor and use of equipment and further stating state that if the amount  
43 of such statement is not paid to the county or city treasurer wherein such

or causes to be entered

noxious



1 real estate is located within 30 days from the date of such notice, a penalty  
 2 charge of 10% of the amount remaining unpaid shall be added to the  
 3 account *in addition to any other penalty assessed pursuant to K.S.A. 2-*  
 4 *1323, and amendments thereto,* and the total amount thereof shall be-  
 5 come a lien upon such real estate. The unpaid balance of such account  
 6 and such penalty charge shall draw interest from the date of entering into  
 7 such contract *or upon accrual of the costs to provide weed control and*  
 8 *management either through an individual weed management plan or upon*  
 9 *the refusal of a responsible party to control weeds* at the rate prescribed  
 10 for delinquent taxes pursuant to K.S.A. 79-2004, and amendments  
 11 thereto. A copy of the statement, together with proof of notification, shall  
 12 at the same time be filed with the register of deeds in such county and  
 13 the county or city clerk, as the case may be, and if such amount is not  
 14 paid within the next 30 days the county or city clerk, as the case may be,  
 15 shall spread the amount of such statement upon the tax roll prepared by  
 16 the clerk and such amount shall become a lien against the entire contig-  
 17 uous tract of land owned by such person or persons of which the portion  
 18 so treated is all or a part, and shall be collected as other taxes are collected,  
 19 and all moneys so collected shall be paid into the *allocated for noxious*  
 20 *weed eradication fund, except that not more than 5% of the assessed*  
 21 *valuation of the entire contiguous tract of land of which the portion so*  
 22 *treated is all or a part shall be spread on the tax rolls against such land in*  
 23 *any one year control and management.* If any land subject to a lien im-  
 24 posed under this section is sold or transferred, the entire remaining un-  
 25 paid balance of such account plus any accrued interest and penalties shall  
 26 become due and payable prior to the sale or transfer of ownership of the  
 27 property, ~~and upon collection shall be paid to the noxious weed eradication fund.~~

noxious

29 Sec. 15. K.S.A. 2-1321 is hereby amended to read as follows: 2-1321.  
 30 If any ~~person shall be~~ *responsible party* is dissatisfied with the charge  
 31 ~~made for material or rent of equipment used in in the statement of charges~~  
 32 ~~assessed against them for the control and eradication management of nox-~~  
 33 ~~ious weeds, said person shall~~ *the responsible party,* within ~~ten~~ 10 days  
 34 from the mailing of the ~~account showing such charge, statement, shall file~~  
 35 a protest with the board of county commissioners, who shall hold a hear-  
 36 ing thereon and shall have the power to either adjust or affirm such  
 37 charge. If any ~~person shall be~~ *responsible party* is dissatisfied with the  
 38 decision rendered by the board of county commissioners ~~said person shall~~  
 39 *the responsible party,* within ~~thirty~~ 30 days, shall file a written notice of  
 40 appeal with the clerk of the district court of the county ~~and thereupon~~  
 41 ~~an action shall be docketed in the district court and be tried the same as~~  
 42 ~~other actions as provided by the Kansas act for judicial review.~~ Upon the  
 43 final determination of any change in the account, if any, the county or

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1 city clerk shall correct the records in his or her the clerk's office in ac-  
2 cordance therewith.

3 Sec. 16. K.S.A. 2000 Supp. 2-1322 is hereby amended to read as  
4 follows: 2-1322. (a) ~~The board of county commissioners, or the governing~~  
5 ~~body of incorporated cities, cooperating with the secretary of the state~~  
6 ~~board of agriculture, shall purchase or provide for needed and necessary~~  
7 ~~equipment and necessary chemical material for the control and eradica-~~  
8 ~~tion of noxious weeds. The board of county commissioners of any county~~  
9 ~~or the governing body of any city may use any equipment or materials~~  
10 ~~purchased as provided for in this section, upon the highways, streets and~~  
11 ~~alleys, for the treatment and eradication on public land for the control~~  
12 ~~and management of weeds which have not been declared noxious by leg-~~  
13 ~~islative action.~~

14 ~~(b) Except as provided in K.S.A. 2-1333 and amendments thereto,~~  
15 ~~the board of county commissioners shall sell chemical material to the~~  
16 ~~landowners in their jurisdiction at a price fixed by the board of county~~  
17 ~~commissioners which shall be in an amount equal to not less than 50%~~  
18 ~~nor more than 75% of the total cost incurred by the county in purchasing,~~  
19 ~~storing and handling such chemical materials used in the control and~~  
20 ~~eradication of noxious weeds, and may make such charge for the use of~~  
21 ~~machines or other equipment and operators as may be deemed by them~~  
22 ~~sufficient to cover the actual cost of operation. However, once the tax~~  
23 ~~levying body of a county, city or township has authorized a tax levy of 1.5~~  
24 ~~mills or more, the board of county commissioners may collect from the~~  
25 ~~landowners in their jurisdiction an amount equal to 75% but not more~~  
26 ~~than 100% of the total cost incurred by the county in purchasing, storing~~  
27 ~~and handling of chemical materials used in the control and eradication of~~  
28 ~~noxious weeds.~~

29 ~~(c) Whenever official methods of eradication adopted by the state~~  
30 ~~board of agriculture are not used in applying the chemical material pur-~~  
31 ~~chased, the board of county commissioners may collect the remaining~~  
32 ~~portion of the total cost thereof from the landowner.~~

33 (b) If a responsible party fails to use a control method other than an  
34 official method adopted by the secretary, the board of county commis-  
35 sioners and the governing body of any city that employs a weed director  
36 may collect from the responsible party the full amount of the costs in-  
37 curred by the city or county to control and manage the noxious weeds.

uses

38 (d) (c) The board of county commissioners, ~~township boards,~~ and the  
39 governing body of cities any city that employs a weed director shall: (1)  
40 Keep a record showing purchases of material and equipment for control  
1 and eradication management of noxious weeds. ~~The board of county com-~~  
2 ~~missioners and the governing body of cities shall also;~~ (2) keep a complete  
43 itemized record showing all sales for cash or charge sales of material and

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1 shall; and maintain a record of charges and receipts for use of equipment  
2 owned by each county or city on public and private land. Such records  
3 shall be open to inspection by citizens of Kansas at all times.

4 Sec. 17. K.S.A. 2000 Supp. 2-1323 is hereby amended to read as  
5 follows: 2-1323. (a) Any person, association of persons, corporation,  
6 county or city or other official who ~~shall violate or fail to comply with any~~  
7 ~~of the provisions of this act and acts amendatory thereof or supplemental~~  
8 ~~thereto violates or fails to comply with the control and management~~  
9 ~~requirements for noxious weeds in the containment category, primary~~  
10 ~~management subcategory or secondary management subcategory, or who~~  
11 ~~takes a financial incentive to control noxious weed without controlling~~  
12 ~~noxious weeds shall be guilty of a misdemeanor and shall be punished. A~~  
13 ~~misdemeanor under this subsection shall be punishable upon conviction~~  
14 ~~thereof by a fine of \$100 per day for each day of noncompliance up to a~~  
15 ~~maximum fine of \$1,500.~~

16 (b) Any weed director may assess a civil penalty against any person,  
17 association of persons, corporation, county or city official or other official  
18 who violates or fails to comply with the requirements of the containment  
19 category, primary management category or secondary management cat-  
20 egory, or who takes a financial incentive to control noxious weeds without  
21 controlling noxious weeds within such person's or entity's jurisdiction.  
22 Any assessment of a civil penalty shall follow the fine schedule and appeal  
23 procedure established by rules and regulations of the secretary. A civil  
24 penalty under the subsection may be assessed in addition to any other  
25 penalty or costs allowed by this act. In no event shall a civil penalty  
26 assessed under this subsection be less than the amounts cited in subsection  
27 (a).

28 (c) The secretary may assess a civil penalty against any person, as-  
29 sociation of persons, corporation, county or city official or other official  
30 who violates or fails to comply with the requirements of section 7, and  
31 amendments thereto, the notice or planning requirements of section 8,  
32 and amendments thereto, the hearing requirements of section 9, and  
33 amendments thereto, the requirements of subsection (b) of section 10, and  
34 amendments thereto, and the requirements of K.S.A. 2-1318, and amend-  
35 ments thereto. Such assessment shall be made in accordance with the  
36 Kansas administrative procedure act.

37 Sec. 18. K.S.A. 19-211 is hereby amended to read as follows: 19-211.  
38 (a) Except for any property belonging to a county law enforcement de-  
39 partment and as otherwise provided in this section, no property, the value  
40 of which is more than \$50,000, belonging to any county shall be sold or  
41 disposed of by any board of county commissioners without a unanimous  
42 vote of such commissioners and public notice of such sale or disposition.  
43 Such notice shall state the time or date of the sale or disposition or the

for a use other than to comply with this act

and by refunding such financial incentive, if applicable

for a use other than to comply with this act

not including the costs or expenses associated with controlling noxious weeds not controlled by the person, association of persons, corporation, county or city or other official responsible for controlling noxious weeds, or not including the sale or disposition of the property subject to controlling noxious weeds

1 date after which the property will be offered for sale or disposal, the place  
2 of the sale or disposition and the terms and conditions of the sale or  
3 disposition. Such notice shall be published at least once each week for  
4 three consecutive weeks prior to the sale or disposition in the official  
5 newspaper of the county. The property shall be sold or disposed of pub-  
6 licly, in the manner deemed prudent by the board of county commis-  
7 sioners, to the person or entity tendering the highest and best bid as  
8 determined by the board. The board of county commissioners shall have  
9 the right to reject any or all bids.

10 If, within 45 days after the first publication of the notice of sale or  
11 disposition a petition signed by not less than 2% of the qualified electors  
12 of the county is filed with the county election officer, such property shall  
13 not be sold or disposed of unless the proposition of sale or disposal of  
14 such property is submitted to a vote of the electors of the county at a  
15 question submitted election called therefor. The election shall be called,  
16 noticed and held in the manner provided by K.S.A. 10-120, and amend-  
17 ments thereto, or at a general election. If a majority of the votes cast at  
18 any such election authorizes any sale or disposition, such sale or dispo-  
19 sition shall be made upon the notice hereinbefore prescribed by publi-  
20 cation, to the person or entity tendering the highest and best bid, as  
21 determined by the board. The board of county commissioners shall have  
22 the right to reject any or all bids.

23 (b) If the board of county commissioners rejects all bids or if no bids  
24 are received, the board may proceed to sell or dispose of the property  
25 publicly, in the manner deemed prudent by the board, to the person or  
26 entity tendering the highest and best bid or offer as determined by the  
27 board. If the notice of sale or disposition has been previously published  
28 in the manner set forth in subsection (a), no further notice of sale shall  
29 be published before the property is sold or disposed of pursuant to this  
30 subsection. When property of the county is sold or disposed of pursuant  
31 to this subsection, the board shall cause to be published as a part of the  
32 statement required by K.S.A. 19-227, and amendments thereto, a detailed  
33 account of such sale or disposition which shall list such property, the  
34 person who acquired the property and the purchase price.

35 (c) If the value of the property does not exceed \$1,000, such notice  
36 by publication shall not be required prior to the sale or disposition of such  
37 property. When property of the county having a value of more than \$50  
38 but not more than \$1,000 is sold or disposed of, the board of county  
39 commissioners shall cause to be published as a part of the statement  
40 required by K.S.A. 19-227, and amendments thereto, a detailed account  
41 of such sale or disposition which shall list such property, the person who  
42 acquired the property and the purchase price.

43 (d) Upon a finding by the board that any property is no longer re-

1 quired, or cannot prudently be used for public purposes of the county,  
2 the board, by a unanimous vote, may sell or dispose of such property, the  
3 value of which does not exceed \$50,000, by public or private sale or by  
4 negotiation, as determined by the board. Notice of the board's intent to  
5 sell or dispose of such property shall be published at least two times in  
6 the official county newspaper. Such notice shall include the time, place  
7 and conditions of such sale or disposition.

8 (e) The board, by unanimous vote, may sell or dispose of any real  
9 property interest belonging to the county, including any interest derived  
10 through dedication, plat, condemnation, reversion, abandonment, reser-  
11 vation or tax foreclosure, which the board determines, after notice and  
12 public hearing, to be surplus property not required for public use, and to  
13 be unmarketable property. Such property interest may be sold or dis-  
14 posed of by the county by the adoption of a resolution providing that the  
15 interest of the county shall be vacated and transferring by quitclaim, with-  
16 out benefit of warranties of title, whatever right, title or interest the  
17 county has or may have in the property. The resolution shall provide for  
18 the reservation to the county and the owners of any lesser property rights  
19 for public utilities, the rights-of-way and easements for public service  
20 facilities which are in existence and in use across the property. Upon  
21 adoption of the resolution, the property interests vacated and conveyed  
22 shall revert to and vest in the owners of the real estate immediately abut-  
23 ting thereon, in proportion to the frontage of such land, except in cases  
24 where such land may have been acquired for public use in a different  
25 proportion, in which event it shall revert and vest in the owner of the  
26 adjoining real estate in the same proportion that it was acquired.

27 Following the adoption of the resolution, the county clerk shall record  
28 the conveyance upon the transfer records of the county and shall cause  
29 a notice of the transfer to be published at least two times in the official  
30 county newspaper and to be sent by certified mail to each owner of the  
31 adjoining real estate to whom the property is being transferred, at the  
32 address where the owner's tax statement is sent. A copy of the transfer  
33 and the notice shall be recorded with the register of deeds of the county,  
34 and no fee shall be charged by the county clerk or the register of deeds  
35 recording the transfer.

36 (f) In the event of any sale or disposition of real property pursuant  
37 to the authority under this section, the board, in its discretion, may enter  
38 into and execute contracts for sale or lease-purchase agreements for a  
39 term of not more than five years.

40 (g) The provisions of this section shall not apply to or restrict the  
41 conveyance of real property by any county to the state of Kansas, the title  
42 to which was previously conveyed to such county by the state of Kansas.

43 (h) The provisions of this section shall not apply to or restrict the



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1 conveyance of real property by any county to a nonprofit corporation  
2 organized under the laws of Kansas if such real property is acquired and  
3 conveyed by the county for the purpose of development of an industrial  
4 or business park on such real property comprised of businesses engaged  
5 in: (1) Manufacturing articles of commerce; (2) conducting research and  
6 development; or (3) storing or processing goods or commodities. If the  
7 real property is to be conveyed for an amount which is less than the  
8 amount the county paid to acquire such property, the board of county  
9 commissioners shall publish a notice of its intent to convey such property.  
10 The notice shall include a description of the property, the cost of acquir-  
11 ing the property and the amount for which such property is to be con-  
12 veyed. Such notice shall be published once each week for three consec-  
13 utive weeks in the official county newspaper. If, within 45 days after the  
14 first publication of such notice a petition signed by not less than 2% of  
15 the qualified electors of the county is filed with the county election officer,  
16 such property shall not be conveyed unless the proposition of sale or  
17 disposal of such property is submitted to and approved by a majority of  
18 the qualified voters of the county at an election called therefor. The elec-  
19 tion shall be called, noticed and held in the manner provided by K.S.A.  
20 10-120, and amendments thereto, or at a general election.

21 (i) The provisions of this section shall not apply to or restrict the  
22 conveyance of real property by any county to a port authority if such real  
23 property is acquired and conveyed by the county for the purpose of de-  
24 velopment of an industrial, commercial or business park on such real  
25 property. The board of county commissioners shall publish a notice of its  
26 intent to convey such property. The notice shall include a description of  
27 the property, the cost of acquiring the property and the amount for which  
28 the property is to be conveyed. Such notice also shall include the time  
29 and date of the public hearing at which the board proposes to consider  
30 the conveyance of such property. Such notice shall be published at least  
31 once in the official county newspaper. Following the public hearing, the  
32 board of county commissioners may convey such property.

33 (j) Whenever it is required by this section that the board of county  
34 commissioners approve a sale or disposition of property by unanimous  
35 vote and a county has a five-member board, such board may approve a  
36 sale or disposition of property by a  $\frac{1}{2}$  majority.

37 (k) The provisions of this section shall not apply to the conveyance  
38 of property pursuant to ~~K.S.A. 2-1310~~ subsection (c)(2) of section 7, and  
39 amendments thereto.

40 New Sec. 19. If any provision of this act or the application thereof  
41 to any person or circumstance is held invalid, the invalidity shall not affect  
42 other provisions or applications of the act which can be given effect with-  
43 out the invalid provision or application, and to this end the provisions of

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1 this act are severable.

2 Sec. 20. K.S.A. 2-1315, 2-1316a, 2-1317, 2-1321, 2-1324, 2-1325, 2-  
3 1326, 2-1327, 2-1328, 2-1329, 2-1330 and 19-211 and K.S.A. 2000 Supp.  
4 2-1314, 2-1316, 2-1318, 2-1319, 2-1320, 2-1322, 2-1323, 2-1331 and 2-  
5 1332 are hereby repealed.

6 Sec. 21. This act shall take effect and be in force from and after  
7 January 1, 2002, and its publication in the statute book.

Proposed Amendment by Kansas  
Agricultural Alliance

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House Agriculture Committee  
March 12, 2001  
Attachment 10

- 1 (a) Foreign weed category;
- 2 (b) containment category; or
- 3 (c) management category:
- 4 (1) Primary management subcategory; or
- 5 (2) secondary management subcategory.
- 6 New Sec. 6. The secretary is authorized to:
- 7 (a) Adopt official methods for the management of noxious weeds and
- 8 to publish such methods;
- 9 (b) adopt rules and regulations as in the judgment of the secretary
- 10 are necessary to carry out the provisions of this act, and to alter or suspend
- 11 such rules and regulations when necessary; and
- 12 (c) enter into agreements and to cooperate with other governmental
- 13 entities, including the federal government, to administer this act.
- 14 New Sec. 7. (a) The board of county commissioners of each county
- 15 shall, and the governing body of any city may, employ a weed director.
- 16 (b) The board of county commissioners of each county and the gov-
- 17 erning body of any city that employs a weed director shall:
- 18 (1) Prepare an annual report. The annual report shall be in the form
- 19 and contain the information required by the secretary in rules and reg-
- 20 ulations. The annual report shall be submitted to the secretary by Feb-
- 21 ruary 15 and cover the preceding calendar year. The annual report shall
- 22 include the weed director's certification of the following:
- 23 (A) For each financial incentive paid, an authorized control method
- 24 was applied on all land identified in the annual report as being infested
- 25 with noxious weeds in the containment category and primary manage-
- 26 ment subcategory; or
- 27 (B) for each financial incentive paid, an authorized control method
- 28 was applied on land identified in the annual report as being infested with
- 29 noxious weeds in the secondary management subcategory. Certification
- 30 under this paragraph may include a scientifically representative sample
- 31 of the land infested with noxious weeds in the secondary management
- 32 subcategory for which a financial incentive was provided and is not re-
- 33 quired to be a certification for all land in such subcategory.
- 34 (2) Cooperate with the secretary in implementing the provisions of
- 35 this act.
- 36 (3) Prepare a weed management plan. The weed management plan
- 37 shall contain the activities to be conducted during the upcoming calendar
- 38 year to detect, monitor and control any noxious weed found growing in
- 39 the jurisdiction. The weed management plan shall be submitted to the
- 40 secretary by June 1 of each year.
- 41 (4) Establish a procedure to provide a financial incentive to a re-
- 42 sponsible party for the control and management of noxious weeds on a
- 43 substantiated and measurable basis. In no event shall a governmental

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1 entity or government employee obtain a financial incentive to control  
2 noxious weeds on government land.

3 (5) Provide a financial incentive for the control and management of  
4 noxious weeds on a substantiated and measurable basis to a responsible  
5 party who pays to control and manage weeds in accordance with this act  
6 on private property in the containment category or the primary manage-  
7 ment category.

8 (6) Specify practices contained in the official control plan for each  
9 noxious weed present in the county or city for which a financial incentive  
10 shall be provided and identify what financial incentives, if any, the gov-  
11 ernmental entity shall provide for each control practice identified and  
12 what substantiated and measurable basis such financial incentive is  
13 provided.

14 (7) Provide a grievance system, established in the rules and regula-  
15 tions of the secretary, allowing landowners or members of the public to  
16 complain about noxious weeds growing on another's land.

17 (8) Be subject to review and audit by the secretary, and shall make  
18 all its books and records pertaining to this act available for inspection  
19 upon request of the secretary.

20 (9) Ascertain the approximate acreage infested with each kind of nox-  
21 ious weed in the governmental entity's jurisdiction. This information shall  
22 be reported by June 1 of each year to the county, and any city or township  
23 within the county's boundaries.

24 (c) The board of county commissioners of each county and the gov-  
25 erning body of any city that employs a weed director, in cooperation with  
26 the weed director may:

27 (1) Provide a financial incentive on a substantiated and measurable  
28 basis to a responsible party who pays to control and manage weeds in  
29 accordance with this act on private property in the secondary manage-  
30 ment subcategory.

31 (2) Offer for sale any product or material identified in the official  
32 control plan. The price for products or materials offered for sale shall be  
33 determined by the following formula: Price of product or material paid  
34 by the county or city plus any storage or handling amount minus the  
35 financial incentive.

36 New Sec. 8. (a) At least annually, the board of county commissioners  
37 of each county and the governing body of any city that employs a weed  
38 director shall give the public general notice in the official county or city  
39 newspaper of all noxious weeds identified by the weed director as growing  
40 in the geographic area for which the weed director is responsible. The  
41 notice to the general public shall follow the requirements adopted by  
42 rules and regulations of the secretary.

43 (b) The board of county commissioners of each county and the gov-

The same financial incentive shall apply whether the responsible party purchases chemicals from the county noxious weed department or a registered Kansas pesticide dealer.