

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairman Senator Robert Tyson at 8:31 a.m. on January 31, 2003 in Room 423-S of the Capitol.

Members present: Senator Tyson, Senator Taddiken, Senator Lee, Senator Corbin, Senator Downey

Committee staff present: Raney Gilliland, Legislative Research  
Lisa Montgomery, Revisor of Statutes  
Shannon Stone, Secretary

Conferees appearing before the committee:

Theresa Hodges, Director, Bureau of Environmental Field Services, KDHE  
Karl Mueldener, Director, Bureau of Water, KDHE

Others attending: See attached list

The meeting was called to order by Chairman Robert Tyson. There were no bill or resolution introductions.

Theresa Hodges, (Director, Bureau of Environmental Field Services) presented a summary of activities conducted by the Department of Health and Environment to implement K.S.A. 82a-2001 et.seq. (**SB 204**). The report provided a chronology of KDHE's efforts in performing stream flow studies and modeling to determine which streams have a median 1cfs (cubic feet per second) flow or greater. (Attachment 1) United States Geological Survey completed the flow studies and the final report was made available to Committee members. (Attachment 2) Ms. Hodges explained the 4-part test for stream classifications, "use attainability analysis" (UAA), and the 7 designated uses for water as determined by surface water quality standards.

Currently, KDHE is in the process of conducting the triennial review of the surface water quality standards and is holding public meetings across the state to receive input and ideas for revisions to the standards. KDHE will develop regulatory changes in the water quality standards based upon the feedback it receives from these meetings.

Chairman Tyson had questions regarding EPA's readiness to rule on regulations and wanted to know if it was appropriate to use the statutory citation for the definition of a classified stream. (Attachment 3). Mike Tate responded that the EPA can rule on a statute without the specific definition of a classified stream being in a regulation.

Karl Mueldener (Director, Health Environmental Bureau of Water) responded to questions the Committee had concerning present "fecal coliform standards" versus proposed "e-coli standards". He noted that the current standards promote a risk-based approach. The e-coli standard would promote an incidental contact approach. Mr. Mueldener stated that, KDHE is confined to only two categories of water quality classifications: primary contact recreation and secondary contact recreation. The Department is looking into the possibility of adding more categories.

Mr. Mueldener continued, to give testimony on the State Revolving Fund (SRF) for Public Water Supplies. The loan program KDHE administers assists local cities in the construction of drinking water infrastructure. The program was enabled through the Safe Drinking Water Act Amendments of 1996. SRF loans do not require temporary financing as payments can be made promptly for eligible costs through the financial design of the reserve account leverage program. The state budget shortfall has not affected this fund because it is not associated with the State General Fund. (Attachment 4)

Senator Downey commended KDHE on the success and fiscal responsibility of the SRF program. Chairman Tyson thanked all guests who appeared before the Committee.

The meeting was adjourned at 9:27.

**SENATE NATURAL RESOURCES COMMITTEE  
GUEST LIST**

DATE: Jan 31, 2003

NAME	REPRESENTING
Kevin Breaone	Her Law Firm
Margaret Fast	Ks Water Office
JOHN C. BOTTONBERG	BOTTONBERG & ASSOC
TOM FRAIZER	KOFA
Mark Heer	KOFA
Dave Waldw	KDHE
Steve Wolam	KDWP
Steve Swaffar	Ks Farm Bureau
Juni Roe	Deboard
Karl Mueldeyer	KDHE
Theresa Hodges	KDHE
MIKE TATE	KDHE
George Petersen	MTN
Mike Beam	Ks Livestock Assn
Doug Smith	Pineser, Smith & Associates
Tom Brown	GBBA
Leslie Kaufman	KFB



# K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Briefing  
to  
Senate Committee on Natural Resources  
January 31, 2003

Good morning Chairman Tyson and members of the committee. My name is Theresa Hodges. I am the Director of the Bureau of Environmental Field Services, Kansas Department of Health and Environment. I will present a summary of activities conducted by the Department to implement K.S.A. 82a-2001 et.seq. (SB 204).

The statute required KDHE to perform two major tasks and to report annually to the Legislature on the progress being made:

1. Evaluate the classification of stream segments against the criteria for classification provided in the statute; and
2. Evaluate the designated uses of classified stream segments .

The report provides a chronology of KDHE's efforts. KDHE contracted with USGS to perform stream flow studies and modeling to determine which streams have a median 1 cfs flow or greater. That work was completed in December and the final report, which I believe you have, was made available to KDHE on January 16, 2003. Of the 2,232 stream segments on the Kansas Surface Water Register, 30% of the segments had an estimated median stream flow of less than 1cfs when the statutory analysis (most recent 10 years) was used. When the all-available hydrology (AAH) analysis was used, 40% of the stream segments had an estimated median stream flow of less than 1 cfs. An easy way to determine if a stream of interest meets the criteria of a median 1cfs or greater stream flow is to use the USGS website, [www.usgs.gov/Kansas/pubs/press/wrir.02-4292.html](http://www.usgs.gov/Kansas/pubs/press/wrir.02-4292.html).

The Statute describes a 4-part test for stream classification: 1) stream segments with a median flow (most recent 10 years) >1cfs; or 2) stream segments with a wastewater treatment plant discharge (and segments downstream); or 3) stream segments that have actually been shown to have "aquatic" threatened or endangered (T & E) species listed in rules and regulations; or 4) stream segments that have <1cfs median flow, but have pooling that provides important biological refuge and the benefits of



classification outweigh the costs. We are working to identify those stream segments that receive a wastewater discharge. And, we are working with the Department of Wildlife and Parks to identify what is considered "aquatic" T & E species.

In order to integrate the provisions of the statute into the water quality standards, the regulations were modified, public hearings were held and the regulations were adopted by the Secretary December 9, 2002, with an effective date, under State law, of January 3, 2003. The regulations were sent to EPA on December 10, 2002 for approval. To date, we have had no response from EPA. By regulation, EPA has 60 days to approve the submittal, or 90 days to disapprove.

A use attainability analysis (UAA) is defined as a study conducted or accepted by the department that is designed to determine whether or not a surface water or surface water segment supports, or is capable of supporting in the absence of artificial sources of pollution, one or more of the designated uses. KDHE published a guidance document December, 2001 which describes the protocol for such a study. The surface water quality standards define 7 designated uses: agricultural water supply use (irrigation and livestock watering), aquatic life support use (special, expected, restricted), domestic water supply use, food procurement use, groundwater recharge use, industrial water supply use, and recreational uses (primary and secondary contact recreation).

The statute requires KDHE to complete recreational UAAs on all stream segments listed in the 1999 Surface Water Register where such UAAs have not been conducted (25% each year through October, 2005). During the 2001 field work season UAAs were performed on 167 stream segments. In the December 9, 2002 regulatory adoption of water quality standards, 29 stream segments were proposed for deletion; 67 stream segments were proposed for secondary contact recreation and 1 stream segment was proposed for primary contact recreation. Recreational UAA field work was conducted on 314 stream segments during the period of April 1 through October 31, 2002. The reports on these latest UAAs are being developed for review, both internally and then subject to the public participation process.

The statute required KDHE to publish a listing of currently classified stream segments that have had UAAs conducted to assign designated uses other than recreational uses, where other uses have been determined not attainable and those stream segments where such UAAs have not been conducted. The report includes a series of maps which depict, by individual uses, the stream segments in each of these categories.

Looking ahead to future tasks, there are several. KDHE is in the process of conducting the triennial review of the surface water quality standards. Seven public meetings have been held across the state to receive input and ideas for revisions to the standards. In addition KDHE has attempted to coordinate the water quality efforts by having attended 3 basin advisory committee (BAC) meetings and plan to attend 4 or 5 other BAC meetings to let them know about the review and seek their input. KDHE will now develop regulatory changes in the water quality standards based upon the comments received. The revisions will then go through the regulatory process.

The designated use changes resulting from the UAAs conducted during the 2002 field work season will be reviewed internally, public comment will be sought and then they too must be adopted into regulations through the regulatory process. Additionally KDHE is to establish a procedure in rules and regulations to insure that all reviews pertaining to the scientific studies to determine if the stream segment provides an important biological refuge and the determination of the cost/benefit analyses meet the statutory requirements. EPA is currently working on developing recreational UAA guidance which is to include economic analyses. KDHE is hopeful that this guidance from EPA will be helpful in the development of a protocol to address cost/benefit as it pertains to use attainability analyses. And, with the stream flow data now available from USGS, we can better delineate those streams which fall into the category that will require a cost/benefit analysis.

KDHE has met all of the deadlines for activities stipulated in the statute.

I will be glad to answer any questions.

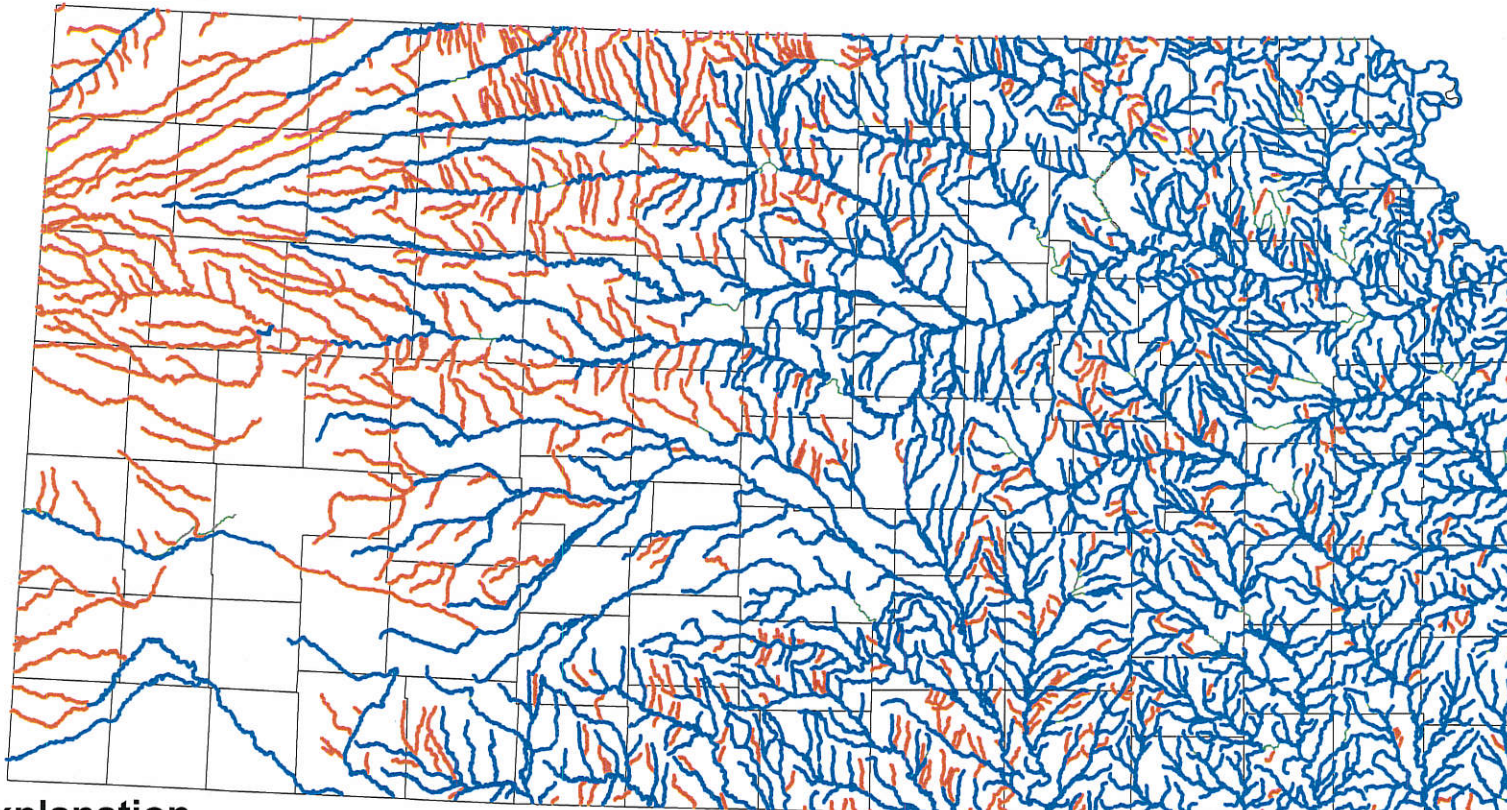
Respectfully Submitted,

Theresa L. Hodges  
Director  
Bureau of Environmental Field Services

Att. 2

USGS

Median streamflows Using KSA 82a-2001 Criterion  
(Last 10 years of streamflow data at sites with at least 10 years of record)



**Explanation**

- KSA Median flow  $\geq 1$  CFS
- KSA Median flow  $< 1$  CFS
- Unclassified stream segment
- County boundary

30 % of the stream segments of the Kansas Surface Water Register have less than 1 CFS median flow at their downstream end (KSA)

Reference: U.S. Geological Survey Water Resources Investigations Report 02-4292

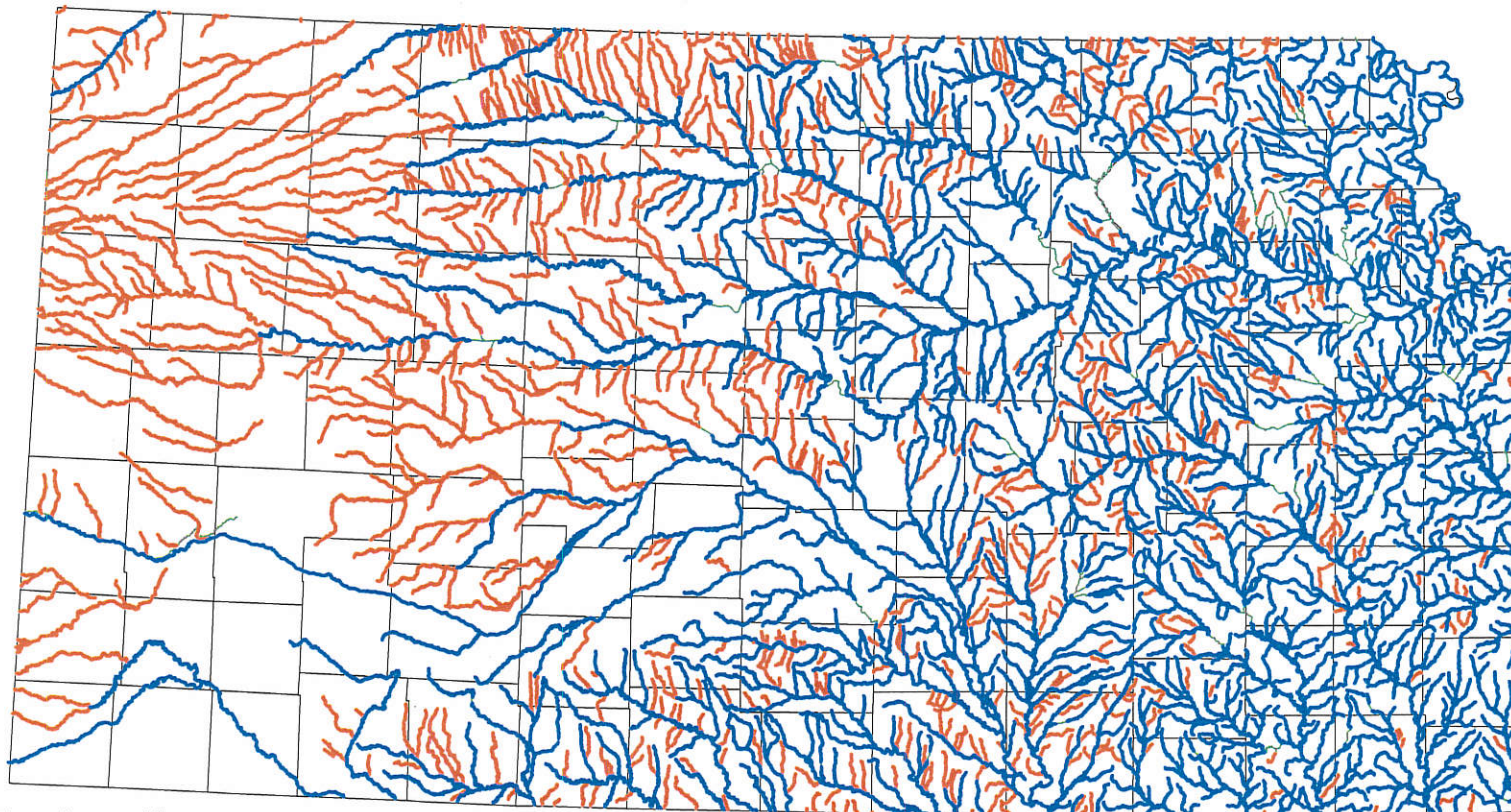
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Attachment 2-1



2-2

USGS

### Median Streamflows Using All-Available Hydrology (AAH) (All streamflow data at sites with 10 or more years of record)



#### Explanation

- AAH Median flow  $\geq 1$  CFS
- AAH Median flow  $< 1$  CFS
- Unclassified stream segment
- County boundary

40 % of the stream segments of the Kansas Surface Water Register have less than 1 CFS median flow at their downstream end (AAH)

Reference: U.S. Geological Survey Water Resources Investigations  
Report 02-4292



(e) Analytical testing. All methods of sample collection, preservation, and analysis used in applying any of these regulations shall be in accordance with those methods prescribed by the department.

(f) Application of standards to privately owned surface waters. The application of water quality standards to privately owned water bodies shall be subject to the provisions of K.S.A. 65-171d, and amendments thereto. (Authorized by K.S.A. 2001 Supp. 65-171d and K.S.A. 65-171m; implementing K.S.A. 2001 Supp. 65-165 and 65-171d, K.S.A. 65-171m, and K.S.A. 2001 Supp. 82a-2001; effective May 1, 1986; amended, T-87-8, May 1, 1986; amended May 1, 1987; amended Aug. 29, 1994; amended July 30, 1999; amended Aug. 31, 2001; amended Jan. 3, 2003.)

**28-16-28d. Surface water use designation and classification.** (a) Designated uses of surface waters other than stream segments shall be defined as follows:

(1) "Agricultural water supply use" means the use of surface waters other than stream segments for agricultural purposes, including the following:

(A) "Irrigation," which means the withdrawal of surface waters other than stream segments for application onto land; and

(B) "livestock watering," which means the provision of surface waters other than stream segments to livestock for consumption.

(2) "Aquatic life support use" means the use of surface waters other than stream segments for the maintenance of the ecological integrity of lakes, wetlands, and ponds, including the sustained growth and propagation of native aquatic life; naturalized, important, recreational aquatic life; and indigenous or migratory semiaquatic or terrestrial wildlife directly or indirectly dependent on surface waters other than stream segments for survival.

(A) "Special aquatic life use waters" means either surface waters other than stream segments that contain combinations of habitat types and indigenous biota not found commonly in the state or surface waters other than stream segments that contain representative populations of threatened or endangered species.

(B) "Expected aquatic life use waters" means surface waters other than stream segments containing habitat types and indigenous biota commonly found or expected in the state.

(C) "Restricted aquatic life use waters" means surface waters other than stream segments containing indigenous biota limited in abundance or diversity by the physical quality or availability of habitat, due to natural deficiencies or artificial modifications, compared to more suitable habitats in adjacent waters.

(3) "Domestic water supply use" means the use of surface waters other than stream segments, after appropriate treatment, for the production of potable water.

(4) "Food procurement use" means the use of surface waters other than stream segments for obtaining edible forms of aquatic or semiaquatic life for human consumption.

(5) "Groundwater recharge use" means the use of surface waters other than stream segments for replenishing fresh or usable groundwater resources. This use may in-

volve the infiltration and percolation of surface water, other than stream segments through sediments and soils or the direct injection of surface waters other than stream segments into underground aquifers.

(6) "Industrial water supply use" means the use of surface waters other than stream segments for nonpotable purposes by industry, including withdrawals for cooling or process water.

(7) "Recreational use" means the use of surface waters other than stream segments for primary or secondary contact recreation.

(A) "Primary contact recreational use for surface waters other than classified stream segments" means use of a surface water other than a classified stream segment for recreation during the period from April 1 through October 31 of each year during which the body is immersed to the extent that some inadvertent ingestion of water is probable. This use shall include boating, mussel harvesting, swimming, skin diving, waterskiing, and windsurfing.

(B) "Secondary contact recreational use for surface waters other than classified stream segments" means recreation during which ingestion of surface water other than classified stream segments is not probable. This use shall include wading, fishing, trapping, and hunting.

(b) Designated uses of stream segments shall be those defined in K.S.A. 82a-2001(c), and amendments thereto.

(c) Surface water classification. Surface waters shall be classified as follows:

(1) Classified stream segments shall be those stream segments defined in K.S.A. 82a-2001(a), and amendments thereto.

(2) Classified lakes shall be all lakes owned by federal, state, county, or municipal authorities and all privately owned lakes that serve as public drinking water supplies or that are open to the general public for primary or secondary contact recreation.

(3) Classified wetlands shall be the following:

(A) All wetlands owned by federal, state, county, or municipal authorities;

(B) all privately owned wetlands open to the general public for hunting, trapping, or other forms of secondary contact recreation; and

(C) all wetlands classified as outstanding national resource waters or exceptional state waters, or designated as special aquatic life use waters according to subsection (d).

Wetlands created for the purpose of wastewater treatment shall not be considered classified wetlands.

(4) Classified ponds shall be all ponds owned by federal, state, county, or municipal authorities and all privately owned ponds that impound water from a classified stream segment as defined in paragraph (c)(1).

(d) Assignment of uses to surface waters.

(1) Classified surface waters shall be designated for uses based upon the results of use attainability analyses conducted or approved by the department. The provisions of the federal water quality standards regulation, 40 C.F.R. 131.10 as in effect on July 1, 2000, shall be followed and are hereby adopted by reference.

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28-16-28d continued

(5) "Groundwater recharge use" means the use of surface water for replenishing fresh or usable groundwater resources. This use may involve the infiltration and percolation of surface water through sediments and soils or the direct injection of surface water into underground aquifers.

(6) "Industrial water supply use" means the use of surface water for nonpotable purposes by industry, including withdrawals for cooling or process water.

(7) "Recreational use" means the use of surface water for primary or secondary contact recreation.

(A) "Primary contact recreational use" means recreation during which the body is immersed in surface water to the extent that some inadvertent ingestion of water is probable. This use shall include boating, mussel harvesting, swimming, skin diving, waterskiing, and windsurfing.

(B) "Secondary contact recreational use" means recreation during which ingestion of surface water is not probable. This use shall include wading, fishing, trapping, and hunting.

(b) Surface water classification. Surface waters shall be classified as follows:

(1) Classified streams shall include all streams with mean summer base flows exceeding 0.003 cubic meters per second. Regardless of flow, a stream shall be deemed classified if studies conducted or approved by the department show that pooling of water during periods of zero flow provides important refuges for aquatic life and permits biological recolonization of intermittently flowing segments.

(2) Classified lakes shall be all lakes owned by federal, state, county, or municipal authorities and all privately owned lakes that serve as public drinking water supplies or that are open to the general public for primary or secondary contact recreation.

(3) Classified wetlands shall be the following:

(A) All wetlands owned by federal, state, county, or municipal authorities;

(B) all privately owned wetlands open to the general public for hunting, trapping, or other forms of secondary contact recreation; and

(C) all wetlands classified as outstanding national resource waters or exceptional state waters, or designated as special aquatic life use waters according to K.A.R. 28-16-28d(c).

Wetlands created for the purpose of wastewater treatment shall not be considered classified wetlands.



**K A N S A S**

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on  
State Revolving Fund for Public Water Supplies  
to  
Senate Natural Resources Committee  
Presented by Karl Mueldener  
Director, Bureau of Water**

**January 31, 2003**

The Kansas Department of Health and Environment (KDHE) administers a low interest loan program to assist local municipalities in construction of drinking water infrastructure. The program is commonly called the water supply SRF (State Revolving Fund). Kansas authorizing statutes are found at K.S.A. 65-163d through 163u. The enabling federal legislation was the Safe Drinking Water Act Amendments of 1996. The SRF has been a successful endeavor and one of excellent cooperation between federal, state, and local governments.

The SRF is made possible by receipt of capitalization grants from the EPA. States are required to provide a match of at least 20%. Kansas' match is provided through the proceeds of revenue bonds issued by the state. Loans are made by the state to municipalities. The repayments from the municipalities are used to cover the state's costs for the bonds. The interest rate is established by regulation and is set at 80% of market. The term of most loans is the maximum allowed or 20 years.

Various repayment schedules may be accommodated. Most borrowers choose a steady payment schedule, but some loans have been written to offer a smaller payment during the earlier years. This accommodates the need to have a new water system in place and operational before user charges are collected. The SRF loans cover construction cost, but also other associated project costs such as engineering, administration, insurance, and even funds to establish a reserve account. Temporary financing is not needed with an SRF loan as payments can be made promptly for eligible costs.

*Senate Natural Resources Committee  
Date: January 31, 2003  
Attachment 4-1*

DIVISION OF ENVIRONMENT

Bureau of Water

CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE 420, TOPEKA, KS 66612-1367

Voice 785-296-5500

Fax 785-296-0086

<http://www.kdhe.state.ks.us>

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Interest rates are now running approximately 4%. Since inception, 87 loans have been made for \$182 Million. This is an average of \$2.1 Million per loan. The largest has been \$9,200,000 to Parsons, and the smallest to Doniphan RWD #5 for \$46,304. State statutes require that municipalities with a population under 5,000 be provided funds. This has not been an issue with 74% of the loans and 42% of the funds going to small systems. A list of projects funded over the last year follows:

*Drinking Water SRF Projects Funded Since July 1, 2001*

<u>City/Project Name</u>	<u>Loan Amount</u>	<u>City/Project Name</u>	<u>Loan Amount</u>
Douglas Co. RWD #4	1,250,000	Marysville	350,000
Garden City	3,000,000	Medicine Lodge	650,000
Garnett	1,230,000	Newton	1,400,000
Hiawatha	1,374,044	Osage City	2,036,500
Hutchinson	2,508,271	Osage Co. RWD #1	250,000
Iola	9,000,000	Osawatomie	902,250
Jewell	550,300	Overbrook	160,000
Lawrence-1	7,000,000	Pottawatomie RWD #3	564,422
Lawrence-2	5,620,015	Public WWD #4 (Cherryvale)	737,000
Leavenworth Co. CRWD #7	1,652,957	Salina Co. RWD #4	238,605
Maize	5,000,000	Sharon Springs	642,481

Kansas' drinking water SRF has several unique features if compared to other states. Kansas turns each federal grant dollar into four dollars of loans. The financial design is called a reserve account leverage program. The EPA grant is not loaned but placed in a reserve account, and pledged as security for repayment of state-issued revenue bonds. The proceeds of the revenue bonds are loaned to municipalities to help meet local needs which are significant. A second unique feature of the Kansas SRF is a contract with the Kansas Rural Water Finance Authority (KRWFA). The KRWFA screens all borrower's ability to repay the loan and reviews some borrower's finances annually to help avoid problems, and assuring repayments are made. The Kansas Rural Water contract also assists in SRF program outreach, providing a positive link with the industry.

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