

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 3:30 p.m. on February 1, 2010, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Bowers - Excused
Representative Johnson - Excused
Representative Moxley - Excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Pat Matzek, Committee Assistant

Conferees appearing before the Committee:

John Donley, Assistant General Counsel, Kansas Livestock Association
Constantine Cotsoradis, Deputy Secretary of Agriculture, Kansas Department of Agriculture
Herbert Graves, Jr., Executive Director, State Association of Kansas Watersheds

Others attending:

See attached list.

Chairman Powell opened the meeting asking Committee members if they had any bill introductions. Representative Lukert introduced a bill that calls for the reopening of one of the entrances or exists at Tuttle Creek. By general consensus of the Committee members, the bill was introduced.

Hearing on HB 2493 - Eliminating classifications of dams and water obstructions.

PROPONENT:

Chairman Powell opened the hearing on **HB 2493** with the introduction of John Donley, Assistant General Counsel, Kansas Livestock Association (KLA), who testified in favor of **HB 2493** (Attachment 1), stating that KLA is not a full proponent of the measure that is in this bill; however, it is a good opportunity to clarify KLA's position on dams and the inspection process. Mr. Donley further stated that while KLA realizes that a removal of safety inspections for all dams in the state of Kansas could potentially put citizens at risk in the extreme case that a dam breaches, KLA would support removing the requirement for inspection of dams where the only lives affected by a potential breach would be the lives of the owner or operator of the dam. KLA believes that the dam owners should not be subjected to the expense of increased dam inspections that come with hazard re-classification when the cause is downstream development that is beyond control of the dam owner.

OPPONENT:

Constantine Cotsoradis, Deputy Secretary of Agriculture, Kansas Department of Agriculture (KDA), spoke in opposition of **HB 2493** (Attachment 2), advising that whether or not dams should be classified based on their risk to human life and property, and whether or not those dams should be inspected is a policy of the legislative branch of government, and it is KDA's responsibility to advise on the impact of the proposed legislation. Mr. Cotsoradis further stated that this bill will remove all requirements for the inspection of high and significant hazard dams, maintaining that these dams are classified as such because human lives are likely to be lost if the dam fails. According to Mr. Cotsoradis, the public has an expectation that dams and other obstructions are regulated and safe, but that expectation will not be met if this bill becomes law.

Matt Scherer III, P.E., Water Structures, Division of Water Resources, Kansas Department of Agriculture, also answered questions posed by members of the Committee.

CONTINUATION SHEET

Minutes of the House Agriculture and Natural Resources Committee at 3:30 p.m. on February 1, 2010, in Room 783 of the Docking State Office Building.

NEUTRAL:

Herbert Graves, Jr., Executive Director, State Association of Kansas Watersheds (SAKW), appeared as a neutral conferee on **HB 2493** (Attachment 3), stating Kansas has and needs a dam safety program and that dam inspections must be conducted to assess the condition and needed repairs of dams. Mr. Graves advised the Kansas Department of Agriculture's Division of Water Resources (DWR) does an excellent job in administering their program; however, SAKW feel some aspects of current regulations have resulted in unreasonable demands on dam owners. SAKW feels that as a minimum, watershed districts should get dam breach inundation maps made for all their dams and follow this up by notifying each and every landowner within the breach area of their dams about the hazards of building inhabitable structures in breach areas.

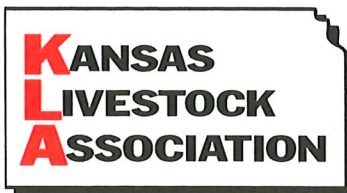
At the conclusion of the conferee presentations, the hearing was closed on **HB 2493**.

The Kansas Agricultural Remediation Board Annual Report for 2009 is on file in Representative Powell's office.

Also, there is a copy of the Kansas Department of Agriculture, Division of Water Resources, written report on Implementing Flex Accounts (K.S.A. 82a-736) in each Committee member's folder.

The next meeting is scheduled for February 2, 2010.

The meeting was adjourned at 4:30 p.m.



Since 1894

TESTIMONY

To: House Agriculture and Natural Resources Committee
Representative Larry Powell, Chairman

From: John Donley, Assistant Counsel, Kansas Livestock Association

Date: February 1, 2010

Re: HB 2493 – Eliminating classifications of dams and water obstructions

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.

Good afternoon Mr. Chairman and members of the Committee. My name is John Donley, and I serve as Assistant Counsel for the Kansas Livestock Association. I appreciate the opportunity to testify this afternoon to discuss KLA's policy as it relates to HB 2493.

While KLA realizes that a removal of safety inspections for all dams in the state of Kansas could potentially put citizens at risk in the extreme case that a dam breaches, KLA would support removing the requirement for inspection of dams where the only lives affected by a potential breach would be the lives of the owner or operator of the dam. Additionally, KLA would support a provision that would not cause dam owners to bear the brunt of increased costs and inspections due to downstream development.

To aid in understanding the problems K.S.A. 82a-303b and 82a-303c are causing for dam owners, I'd first like to explain the provisions of both statutes. Current law grants the Department of Water Resources (DWR) the power to promulgate safety regulations for the construction and maintenance of dams. In simplified terms, current DWR guidelines require dams that are not a threat to human life to be classified as hazard class A dams. Any dam in which a failure would endanger one habitable home is classified as a hazard class B dam, and any dam in which a failure would endanger two or more habitable homes is classified as a hazard class C dam. .

Under the current provisions of K.S.A. 82a-303b, hazard class A dams are not required to be inspected. A dam owner who owns a dam that is classified as a hazard class B dam is required to have an inspection performed by a licensed engineer at the owner's expense once every five years. The owner of a hazard class C dam is required to have the dam inspected by a licensed engineer at the owner's expense once every three years. The provisions of K.S.A. 82a-303c in turn require the repair of any structural defects in a dam that an inspection might discover. So class A dams are generally the cheapest to maintain because no inspections are

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Attachment 1

required for those dams, while class B and C are respectively more expensive to maintain because of the increased inspections requirements for each class.

The regulatory arrangement set out in these statutes is causing two problems for dam owners around the state. The first problem that has arisen for some dam owners with respect to these statutes is that downstream construction by third parties within a dam's breach inundation area causes the dam's hazard class to be changed to a higher classification. Dams that were once hazard class A dams have become hazard class B or C dams with the construction of downstream homes. Thus the dam owner, through actions beyond his or her control, may be subjected to significantly increased inspection costs and repair liabilities.

The second problem caused by these statutes is that some dams have been classified as hazard class C even though the only lives or homes they threaten are those of the dam's owner or operator, or their immediate families. For example, KLA has a member in south-central Kansas whose farm dam had been classified as a hazard class C dam because two houses, both of which belong to him, sit below the dam. Under current law, the owner is responsible for hiring an engineer to inspect the dam every three years, and to repair any defects in the dam to DWR specifications. This created a situation in which it was cheaper for the landowner to abandon both houses and build a new home rather than repair the dam to DWR's satisfaction.

KLA believes dam owners should not be subjected to the inspection and repair requirements of K.S.A. 82a-303b and 82a-303c when the only lives endangered by a dam are those of the dam's owner or operator, or their immediate families. KLA recognizes that this is a complex issue and some inspections are necessary. However, this bill provides us an opportunity to look at the issue in more detail in order to rectify some of the issues concerning private dam owners. KLA recognizes that eliminating all inspections is likely not the most prudent step forward on this issue; however, this bill may provide an opportunity to consider some of the changes discussed in our testimony.

In conclusion, KLA believes that dam owners should not be subjected to the expense of increased dam inspections that come with hazard re-classification when the cause is downstream development that is beyond control of the dam owner. Furthermore, KLA believes that dam owners should not be subjected to expensive inspection and repair requirements when the only lives endangered by the dam in question are those of the dam owner or operator or their immediate families. I appreciate the chance to discuss our concerns with you this afternoon, and KLA stands ready to assist the Committee in any way we can with this important issue. Thank you.

Testimony on House Bill 2493
to
House Agriculture and Natural Resource Committee

by Constantine V. Cotsoradis
Deputy Secretary
Kansas Department of Agriculture

February 1, 2010

Good afternoon, Chairman Powell and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture, and I am here in opposition to House Bill 2493.

This bill repeals K.S.A. 2009 Supp.82a-303b which includes specific provisions regarding the classification of dams, requirements of owners of high hazard and significant hazard dams to have their dams inspected on a three or five year cycle, respectively and authorizes the chief engineer to access private property to inspect dams and other obstructions. Whether or not dams should be classified based on their risk to human life and property and whether or not those dams should be inspected is a policy of the legislative branch of government. Our responsibility is to advise you on the impact of the proposed legislation and to carry out those duties authorized by you.

To that extent, this bill will remove all requirements for the inspection of high and significant hazard dams. These dams are classified as such because human lives are likely to be lost if the dam fails. The path of the water escaping such a dam would encompass homes, roads and property if the dam failed.

Requiring high and significant hazard dams to be inspected does not guarantee a dam will not fail, but regular inspections often identify and remedy problems that would lead to critical failures before they happen.

Dams not inspected on a regular basis have a higher probability of failing than those that are inspected. As you can see from the map provided, the consequence of a high or significant hazard dam failing is dire and potentially catastrophic.

Without the requirement to have owners responsible for inspection of their dams, existing dams will likely deteriorate to an unsafe condition. Additionally, without the power to inspect dams, the chief engineer will not be able to fulfill his duties under the act to regulate dams and other stream obstructions.

Dam classifications are not just used to inspect dams, but it is an important criterion in designing dams. Removing the requirement for dam classifications could impact not only the safety of existing dams, but new dams yet to be constructed.

The public has an expectation dams and other obstructions are regulated and safe, but that expectation will not be met if this bill becomes law.

I will answer questions at the appropriate time.

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Attachment 2

Dam Failures in the United States

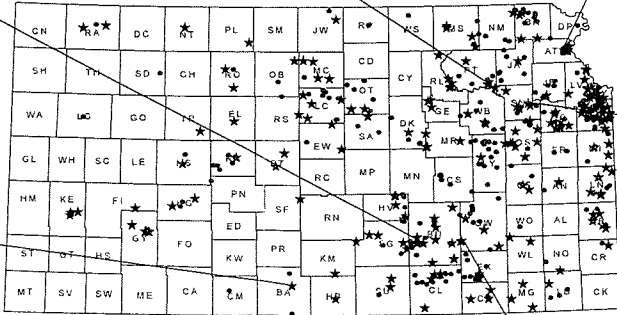
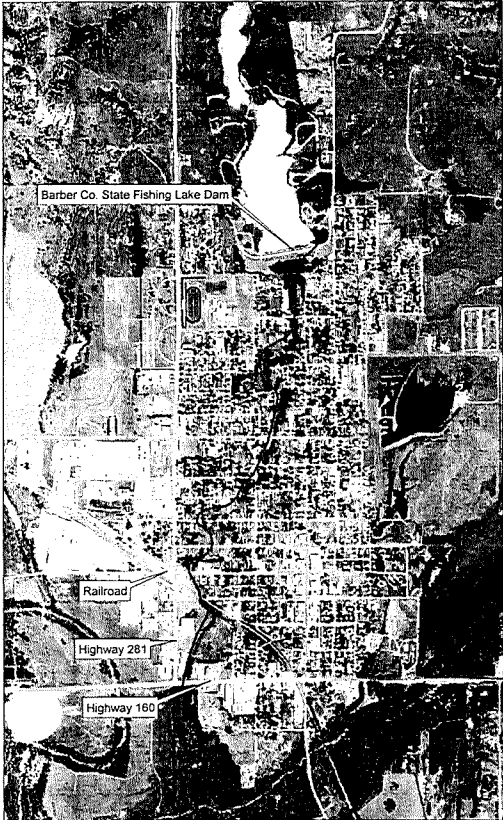
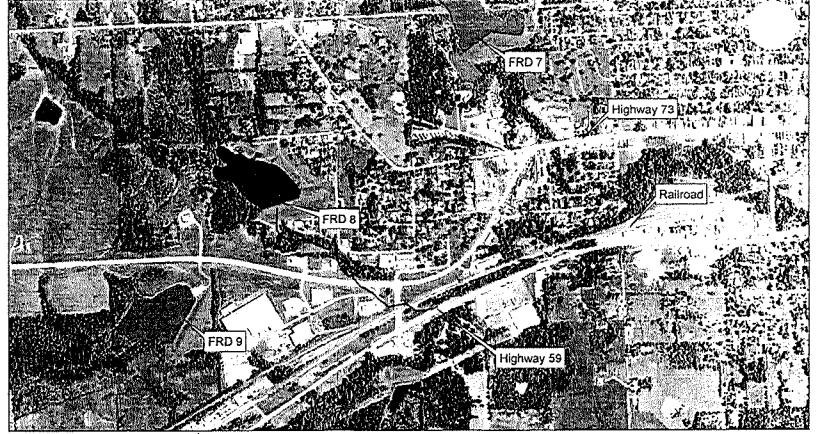
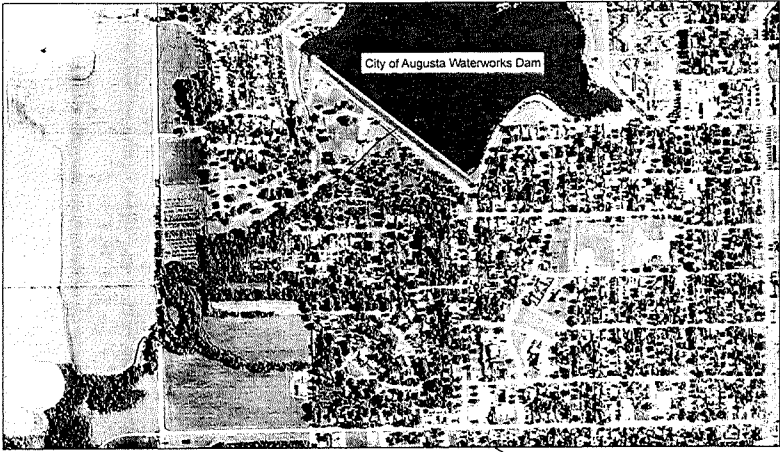
2000 - 2009

Year	Dam	State	Estimated Fatalities	Number of People Injured	Monetary Damages
2000	Massey Energy coal waste impoundment	KY	0		
2001	Hearns Pond Dam	DE	0		\$500,000
2001	Saco Lake dam	PA	0		
2002	Windy Hills Lake dam	MS	1		
2003	privately owned dam	GA	0		
2003	Silver Lake & Tourist Park dams	MI	0		\$102,000,000
2003	Hope Mills	NC	0		\$8,100,000
2003	Lake Upchurch and McLaughlin Lake dams	NC	0		\$350,000
2003	Rumph's Pond dam (private, low hazard)	SC	0		\$144,500
2004	Mobile County Public Schools Environmental	AL			
2004	East Lake Dam	AL	0	0	
2004	Keith Lake dam	AL	0		
2004	Small earth dam	AR	0		
2004	Levee - Upper Jones Tract	CA	0	0	\$90,000,000
2004	Victor Lake (aka Upper Stinchomb)	GA	0		
2004	Piedmont Driving Club Dam	GA	0		
2004	Big Bay Lake dam	MS	0		\$4,750,000
2004	Small earth dam on 10-acre lake	MS	0		
2004	Timber (York) Lake dam	MS	0		
2004	21 dams	NJ	0		\$30,000,000
2004	Levee system	TX	0		
2004	Callaway Dam	TX	0		
2004	McGuire Dam	TX	0		
2004	2 dams in Powhatan Wildlife Mgmt Area	VA	0		
2004	Lake Idylwild Dam	VA	0		
2004	Two farm pond dams	VA	1		
2004	Essex Mill Dam	VA	0		
2005	Wheeler Island levee	CA	0		
2005	Taum Sauk	MO	0	3 children	
2005	Hadlock Pond dam	NY	0		\$1,000,000
2005	Simplot Wastewater Lagoon #1	OR	0		
2006	Kaloko Reservoir Dam	HI	7		
2006	Galestown Dam	MD	0		\$2,500,000
2006	Geary levee	OR	0		\$4,500,000
2007	Rogers Pond (inv. 12702)	CT	0		
2007	Disrow Pond dam (Inv#810)	CT	0		
2007	Millers Pond dam Inv#15205	CT	0		
2007	Nottingham (NH00522)	NH	0		
2007	Mossman Dam	NH	0		\$500,000
2007	Whittle Brook dam 097.03	NH	0		
2007	Cole Marsh dam NH01042	NH	0		
2007	Hansonville Pond dam NH01091	NH	0		
2007	Spit Brook dam 165.10	NH	0		
2007	Rainbow Lake Dam	NJ	0		
2007	Lee's Fishing Lake	WV	0		

Dam Failures in the United States 2000 - 2009

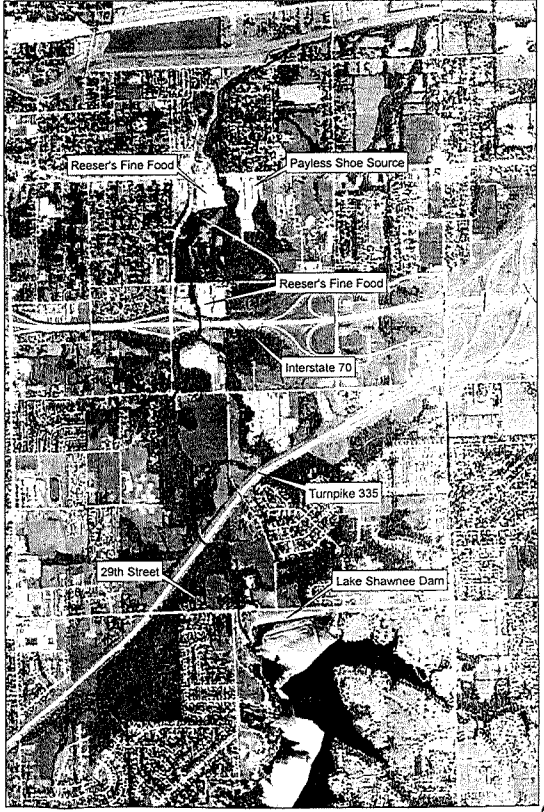
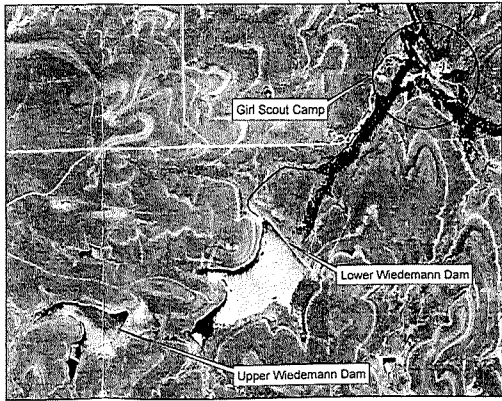
Year	Dam	State	Estimated Fatalities	Number of People Injured	Monetary Damages
2007	Walkers Dam		0		
2008	Lake Bella Vista Dam	AR	0		\$2,900,000
2008	Locklin Lake Dam	FL	0		
2008	Heggen Dam	ID	0		
2008	Earlham Lake Dam	IN	0		
2008	Breedsville Dam	MI	0		
2008	Moon Valley Lake	MO	0		
2008	Kingston Plant coal waste dam	TN	0		\$1,000,000,000
2008	Pura Oil (aka Rhine) Lake Dam	TX	0		
2008	Mill Creek Dam	WA	0		
2008	Lake Delton	WI	0		\$1,000,000

Source: Association of State Dam Safety Officials



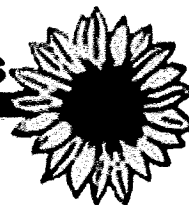
High and Significant Hazard Dams

- * High Hazard
- Significant Hazard





**STATE ASSOCIATION
OF KANSAS WATERSHEDS**



**Testimony of
Herbert R. Graves Jr.
Executive Director, State Association of Kansas Watersheds**

**Presented to the
COMMITTEE ON AGRICULTURE and NATURAL RESOURCES**

for

HB 2493

February 1, 2010

CHAIRMAN POWELL AND MEMBERS OF THE COMMITTEE: Even though SAKW comes before you today taking a neutral stance on HB 2493, we feel many issues relating to dam safety in Kansas needs to be addressed as a result of this legislation.

Kansas has and needs a dam safety program. Dam inspections must be conducted to assess the condition and needed repairs of dams. DWR does an excellent job in administering there program. SAKW just feels some aspects of current regulations have resulted in unreasonable demands on dam owners.

FY 2010 budget cuts within the Kansas Department of Agriculture's Division of Water Resources (DWR) resulted in dam safety inspections being once again the responsibility of dam owners where in recent years DWR staff engineers were conducting the inspections at no cost to dam owners.

One consideration presented to DWR by SAKW was to set up a program whereby watershed districts would cost share with DWR allowing DWR engineers to continue with the inspections. This of course would be one more fee paid by districts for state agency assistance. This proposal would save districts over what it would cost to hire consulting engineers for their inspection needs. Experienced DWR engineers could conduct these repetitious inspections in a much more efficient manner.

SAKW was told by DWR that such a program would require regulation changes through legislative action. One negative to this program pointed out by DWR is that private dam owners would not be treated the same as watershed dam owners because of the taxing authority watershed districts have. Since the dam inspection engineers are still on board with DWR, the fees would just pay for travel costs associated with the inspections.

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Current regulations say if dam owners do not conduct the inspections then DWR will and send the inspection bill to the owners. If DWR is not able to fund the initial inspections then how do they fund the inspections when owners fail to do so. A quick fix would be to restore the dollars needed to continue the DWR dam safety inspection program.

It is now time to turn our attention to why dam inspections are required. It is the direct result of dams being classified due to the hazard they impose on upstream and downstream land use in the case of dam failures. All permitted dams are classed either hazard class a, b, or c. Hazard classes low, significant, and high are also used as a equivalent designation. Dam safety inspections are required of all hazard class b (significant) and class c (high) hazard dams by DWR regulations. Low hazard dams still need to be inspected, but more for maintenance issues rather than dam safety issues.

Dam classifications come about for several reasons. Older dams that never were classified originally, changes in land use since construction, new construction designs, and last but not least hazard class changes due to regulation changes. At the present time low hazard dams are being re-classified to higher hazard classes strictly as the result of recent DWR regulation changes. This means that even though no land use changes have taken place since the dam was constructed (the same downstream homes, roads, utilities, and railroads) and the dam is as sound as the day it was declared completed perhaps less than a year ago, new regulations dictate that existing dams may need to be rehabilitated or removed.

SAKW feels that existing dams that are well maintained and have passed the test of time related performance for soundness should be grandfathered with their original hazard class as long as land use conditions remain unchanged since they were constructed. Naturally all new dams, dams in poor condition, and dams affected by land use changes must comply with existing dam safety regulations.

SAKW feels that DWR did not properly analyze the impact of their revised dam safety regulations on existing dams and did not inform the legislature of this fact or how much financial burden was being imposed on dam owners as a result of the proposed regulation change.

SAKW has one final issue that needs to be brought out here that is very relevant to dam safety and hazard classifications issues. The flip side of the story about re-classifying dams where no land use changes take place is where land use changes are taking place and what can be done to stop what is happening in Kansas.

Several counties do manage the areas below dams to prevent development from being affected by a potential dam failure. The fact remains that many other counties fail to consider such management tools. SAKW feels as a minimum watershed districts should get dam breach inundation maps made for all their dams. Follow this up by notifying each and every land owner within the breach area of their dams about the hazards of building inhabitable structures in breach areas. This notification needs to be in writing

and be properly recorded with the county register of deeds for each property. We feel strongly that to give this effort some real meaning legislation should be introduced that for those landowners that ignore the warning and go ahead and build in a breach area, consideration be given to reduce the liability to watershed districts for damages to those properties due to dam failures and rehabilitation costs.

In closing, we know we have presented several issues that this particular legislation does not directly address, but indirectly everything we have presented does relate and affect the dam safety program in Kansas. It probably is asking too much to think HB 2493 can be amended to introduce our proposals, but SAKW is willing to work with this committee to do what is necessary to carry forward our ideas.

Thanks for allowing me to appear before you today and welcome any questions you may have at the proper time.

Respectfully submitted by:



Herbert R. Graves Jr.
SAKW Executive Director

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