

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Vice Chairman Rocky Fund at 3:30 p.m. on March 3, 2010, in Room 783 of the Docking State Office Building.

All members present except:

Chairman Powell - Excused
Representative Hineman - Excused
Representative Johnson - Excused
Representative Moxley - Excused
Representative Wetta - Excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes - Excused.
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:

Joshua Svaty, Secretary, Kansas Department of Agriculture

Others attending:

See attached list.

Vice Chairman Fund opened the meeting with introduction of Joshua Svaty, Secretary, Kansas Department of Agriculture, who gave an informational presentation on Kansas Water Rights (Attachments 1 and 2).

Secretary Svaty explained one of the reasons for his appearing before the Committee was so everyone would have a better understanding of water rights. Some of the high points from his presentation were:

- The water itself is not the property right, but the right to use that water is a property right.
- There are two ways to obtain a water right; apply to the Division of Water Resources (DWR) and after five years of monitoring by the DWR, a perfected or certified water right can be received, or, by buying or leasing it from someone else.
- Tools for Producers:
 - 1945 - Origination of Water Appropriations Act.
 - 1957 - Changes in use of water rights by invention of the center pivot irrigation system.
 - 1973 - Groundwater management districts were formed.
 - 1978 - Users were required to have a water right except for domestic use and stay within the confines of their water appropriation. The Chief Engineer was allowed to develop intensive groundwater use control areas (IGUCAs).
 - 1984 - Established minimum desired stream flows, which was a restriction of what users could do with that water right. Also in this era was the development of "due and sufficient" causes which are reasons why the water right would not be used to protect the user from abandonment, e.g., too much rain, broken pump, pipe problems in the well, etc.
 - 1993 - Establishment of Water Rights Conservation Program was another example of due and sufficient cause which the DWR voluntarily put in place in rules and regulations, and stated that if the user set aside their water right in the Water Rights Conservation Program, the user would not have to pump it. This addressed the issue of "use it or lose it."
 - Modern Day - Determine how to fix the Water Rights Conservation Program, e.g., flexibility issue, cost issue, contractual arrangement to be able to leverage Environmental Quality Incentive Program (EQUIP) dollars, etc. The challenge of the lawmakers along with the KDA is to determine how to give producers valuable tools they can use to be able to maximize their real property right and thereby not being forced to engage in foolish pumping in order to not abandon their water right.

Lane Letourneau, Matt Scherer, and Burke Griggs with the Kansas Department of Agriculture, Division of Water Resources, and Constantine Cotsoradis, Deputy Secretary of the Kansas Department of Agriculture, also answered questions from members of the Committee.

CONTINUATION SHEET

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

Vice Chairman Fund opened the Subcommittee meeting on **HB 2493** - Eliminating classifications of dams and water obstructions, to the whole Committee for discussion, as this would be an informational session, and no action would be taken on the bill at this time.

A copy of the statutes that the bill is proposing to repeal was distributed to members of the Committee (Attachment 3).

H. Leroy Pritchard, Resource Consultant, Pritchard Consulting, spoke on water appropriation rights (Attachments 4 and 5).

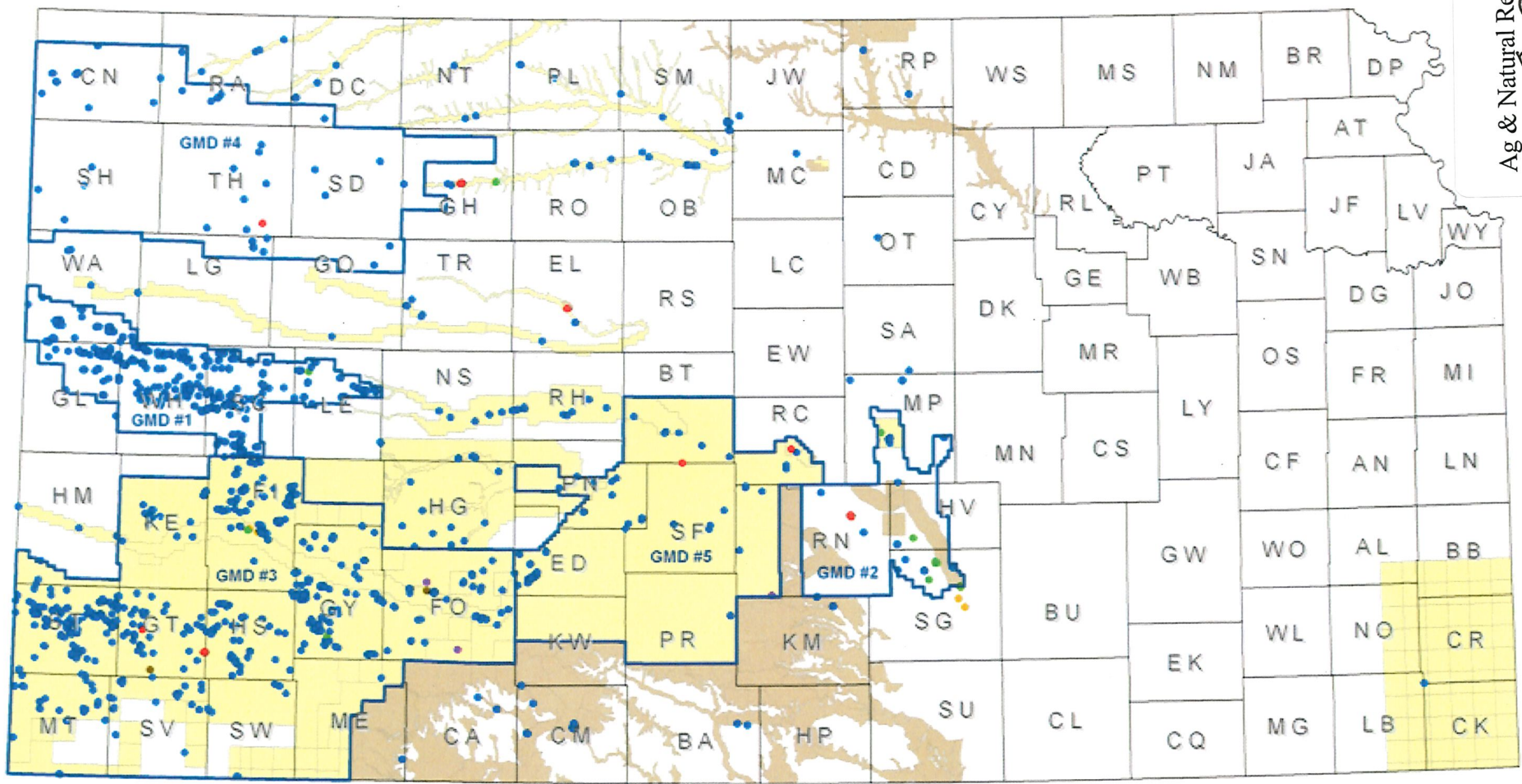
Herb Graves, Kansas Watersheds and Ben Rogers, Wet Walnut Creek Watershed also were in attendance.

At the conclusion of the discussion, Vice Chairman Fund suggested that members of the Division of Water Resources, as well as others from the Kansas Department of Agriculture, and the above-mentioned attendees, have a meeting to discuss their issues in connection with this bill.

The next meeting is scheduled for March 8, 2010.

The meeting was adjourned at 5:10 p.m.

Water Rights Enrolled in WRCP



Kansas Department of Agriculture
Administrative Services, GIS
November 6, 2009

Legend

- Industrial Pds
- Irrigation Pds
- Municipal Pds
- Recreation Pds
- Stockwater Pds
- Thermal Exchange Pds

- Closed
- Restricted

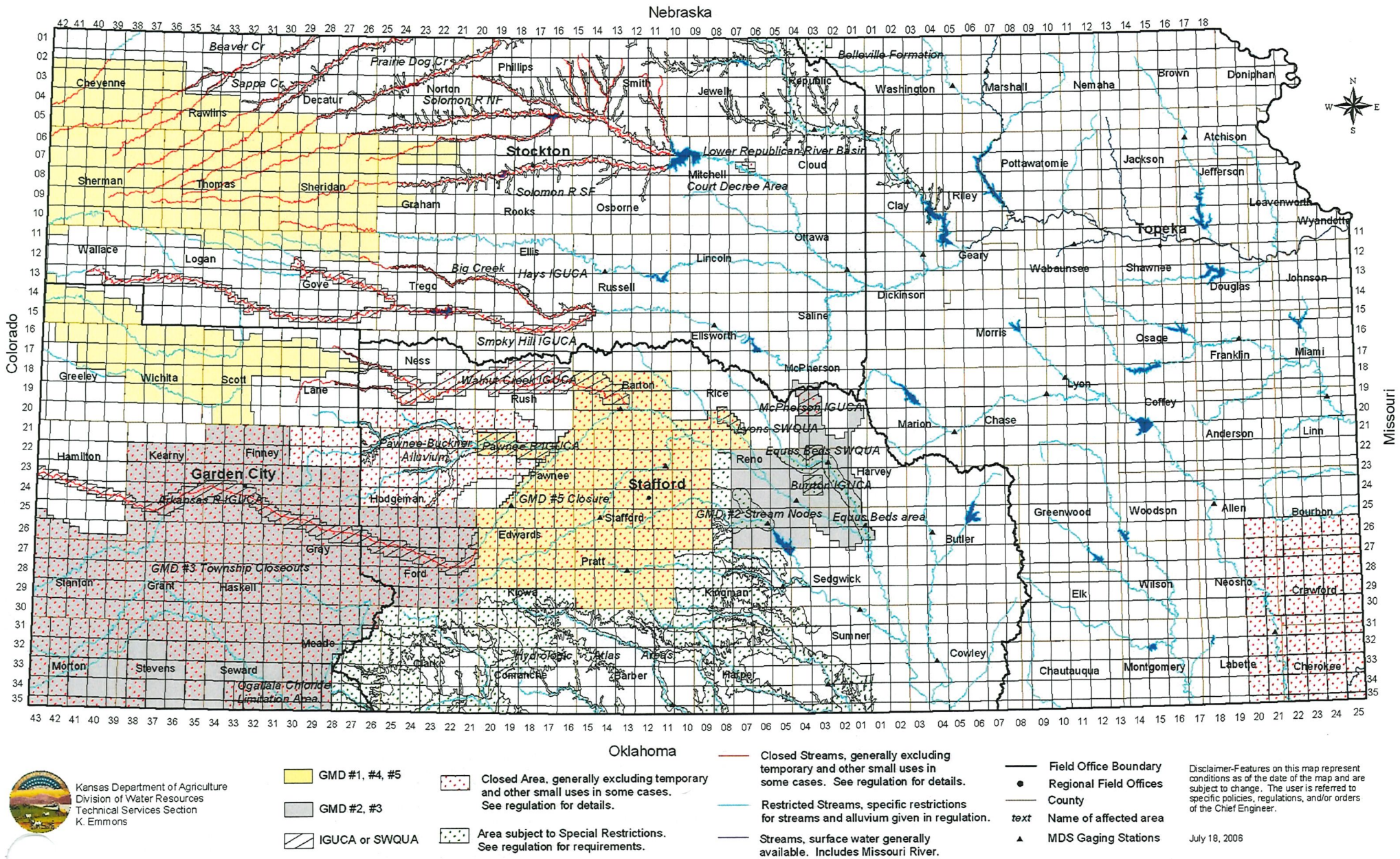


State	# of WRCP-enrolled water rights	Authorized quantity (AF)
Authorized use		
Municipal	14	1,490.65
Industrial	10	5,527.61
Irrigation	962	258,852.02
Thermal Exchange	4	285.22
Stockwater	3	118.53
Recreation	3	135.00
Total enrolled	996	266,409.03
% of State overall total	2.97	2.00
Total all water rights in State =		33,581.00
Total all authorized use in State =		13,300,510

Kansas Department of Agriculture

Closed and Restricted Areas

Division of Water Resources



82a-303b. Inspection of dams by chief engineer; access to private property; costs of inspection; failure to comply, penalties. (a) (1) In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and the duty to inspect any dam or other water obstruction. Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until it is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or the dam is removed. The safety inspection shall be conducted by the chief engineer or authorized representative and the cost shall be paid by the dam owner. The class and size of a dam provided for by the provisions of this act shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto. Inspection fees are as follows:

Size of Dam	Inspection fee
Class 1	\$1,500
Class 2	\$1,500
Class 3	\$2,500
Class 4	\$4,000.

(2) Each hazard class C dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every three years, unless otherwise ordered by the chief engineer.

(3) Each hazard class B dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every five years unless otherwise ordered by the chief engineer.

(4) Within 60 days of the date of inspection, a report of the inspection shall be provided to the chief engineer by the licensed professional engineer who conducted the inspection. The report shall document the physical condition of the dam, describing any deficiencies observed, an analysis of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

(5) Upon failure of a dam owner to comply with the applicable inspection interval, the chief engineer or such chief engineer's authorized representative shall conduct a mandatory inspection of the dam and the costs as established by this act for the inspection shall be paid by the owner, in addition to any other remedies provided for violations of this act.

(6) The failure to file a complete and timely report as required by the provisions of this act, or the failure to submit the fees assessed for inspections conducted by the chief engineer or such chief engineer's authorized representative shall be deemed a violation of this act and subject to the penalties provided by K.S.A. 82a-305a, and amendments thereto.

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 Attachment 3

(b) For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator of such dam or other water obstruction.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2009 Supp. 82a-328, and amendments thereto.

History: L. 1978, ch. 431, § 3;L. 2002, ch. 138, § 4; July 1.

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NATURAL RESOURCES PLANNING AND MANAGEMENT

1331 Prairie Park Lane
Emporia, Kansas 66801
February 26, 2010

Professional Agronomist
Professional Soil Scientist
Professional Wetland Scientist

Mrs. Peggy Mast
State Representative
765 Road 110
Emporia, Kansas 66801

Pm *Wby*

Dear Peggy,

Recently I have been assisting with a project where the landowner wants to develop an excavated pit pond and concurrently sell the borrow material for use off-site. The project will involve about 2 1/2 acres of construction disturbance. However, KDHE requires a "Stormwater Permit" for all construction areas of 1 acre or more. KDHE does not give any consideration as to whether the project is for agricultural uses. So far, this project has cost the landowner several thousand dollars in technical costs and construction has not even started.

The following are the general steps required to get a KDHE Stormwater Permit:

1. Prepare and submit a NOI (Notice of Intent) to KDHE, and pay a \$60 fee. The NOI must include an Area Map and a detailed Plan Map. Even for small construction projects, such as this one, the NOI must be signed by a "professional" technician [This requirement adds significant expense and applies to all excavation projects of 1 acre or more. Specified by State Statutes and/or KDHE Regulations] .
2. Agency coordination. KDHE also requires that attachments be made to the NOI to provide proof of coordination with Kansas State Historical Society and Kansas Wildlife and Parks. [Required by State Statute and/or KDHE Regulations] This adds a substantial time delay. (It should be noted that federal law requires coordination with USACE for these projects, and these requirements are almost always more restrictive than Wildlife and Parks criteria. So, the USACE guidelines should suffice for the NOI.)
3. Sediment basins. KDHE requires that a sediment basin (of prescribed size) be provided for projects involving 10 acres or more. But, KDHE may sometimes require that some smaller projects plan and develop sediment basins.
4. Sediment control practices. KDHE also requires a comprehensive description of "a sequence of construction with appropriate phasing of best management practices." Compliance with this provision is more difficult than would first appear. On the other hand, pit ponds, farm ponds, and other similar structures almost always provide adequate sediment control within the impoundment area. If not, adequate sediment control can be obtained by the use of silt retarding activities such as hay bales and/or silt fences, and grass seeding when the project is completed.

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Attachment 4

In my opinion, KDHE requirements for these small projects are too restrictive, time consuming, and expensive to be cost effective for farmers and other landowners. Currently, construction areas of less than 1 acre are exempt from KDHE Stormwater Permit requirements. However, Kansas Statutes and KDHE Regulations need to be modified to provide an exemption for agriculture-related construction projects of less than 3 acres. This can be done by:

1. Retaining the KDHE exemption from Stormwater Permits on construction areas of less than 1 acre as currently provided by law.
2. Adding an exemption from KDHE Stormwater Permits for farm ponds, pit pond excavations, and similar projects with construction areas between 1 and 3 acres in size. This would be a new provision.

The above described projects (of less than 3 acres) will have minimum environmental impacts. However, if legislators or agency personnel have a major concern about environmental issues or other aspects of the proposed exemption, then an option would be to add the following conditions to Provision 2, above.

Require that the landowner (or his designee), on whose land the project is to be installed, complete and submit to KDHE an "informational form letter" with (a) a short description of the proposed project, (b) a sketch map or aerial photo showing the location of the proposed project, (c) the location and description of any silt retarding practices that are needed, and (d) simple computations to show that the construction area of the proposed project is less than 3 acres in size. Since the "informational form letter" is only for KDHE's review and no Stormwater Permit is involved, the landowner will not be required to pay any fee to KDHE.

Modifying State Statutes and/or KDHE Regulations, as described above, will provide greater simplicity and flexibility. Doing so will also increase the efficiency and effectiveness of the Stormwater Permit Section of KDHE and greatly reduce the administrative burden and technical cost for landowners.

Best regards,



H. Leroy Pritchard
Resource Consultant

cf: State Senator James Barnett, Emporia
State Representative Don Hill, Emporia
State Representative Tom Moxley, Council Grove

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NATURAL RESOURCES PLANNING AND MANAGEMENT

1331 Prairie Park Lane
Emporia, Kansas 66801
February 26, 2010

Professional Agronomist
Professional Soil Scientist
Professional Wetland Scientist

Mr. Tom Moxley
State Representative
1852 South Road 200
Council Grove, Kansas 66846.

copy

Dear Tom:

I have been working with Eagle Creek Watershed District near Olpe for several years. One of the aggravating issues that is recurring is the requirement by the Division of Water Resources that the watershed district obtain a water appropriation right for the water stored in the flood control dams. This is a relatively new requirement that impacts every watershed district in Kansas. The water appropriation right is similar to that required by irrigators and other water users who actually divert water from a stream (or from ground water) to another location..

Prior to building a flood control dam, the watershed district initially is required to pay a fee to DWR to obtain a Permit to Construct from the Chief Engineer and then pay another fee to DWR to apply for a water appropriations right. When the dam is completed, a "DWR Structures Engineer" does an on-site inspection of the dam to verify that the dam is built in accordance with the conditions of the Permit and related designs. But, then the watershed district is required to pay a \$400 fee to DWR to have a second on-site inspection by a "Water Appropriations Engineer" to approve the water right. For flood control dams which do not utilize additional diversionary appurtenances such as check valves, measuring devices, etc., the two DWR inspections check the same identical components. This is a duplication of effort and reflects a significant operational inefficiency and adds to local expense.

Flood control dams do not have additional appurtenances associated with diversion of water to another location unless these dams are multi-purpose water structures. Typical flood control dams generally use a simple drawdown pipe assembly which merely conveys the water from a higher elevation in the reservoir to a lower elevation in the same stream channel. DWR inappropriately calls this drawdown pipe a "diversion works". The problem is related to the definition of diversion works as shown in K.A.R. 5-1-1(y) which includes the generic term "dam(s)". This whole issue of water appropriation and related fees can be eliminated by changing the word "dam(s)" to "dam(s) storing municipal, industrial, and/or irrigation water".

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Date 3-9-10
Attachment 5

Please review this needed change with your fellow legislators in an effort to correct this unnecessary, inefficient, and costly process.

Many thanks,


H. Leroy Pritchard
Resource Consultant

Attachment: DWR Form, Notice of Completion of Diversion Works

cf: State Senator James Barnett, Emporia
=> State Representative Peggy Mast, Emporia
State Representative Don Hill, Emporia

Su. To: CHIEF ENGINEER
Division of Water Resources
Kansas Department of Agriculture
109 SW 9th Street, Second Floor
Topeka, Kansas 66612-1283
www.ksda.gov/dwr

KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES

**NOTICE OF COMPLETION OF
DIVERSION WORKS and/or
REPORT OF FLOWMETER
INSTALLATION**

For Office Use Only:
Code FIS
Fee \$ _____
TR # _____
Rcpt Date _____
Check # _____

Section 1. Action requiring this form is: (See supplemental instructions on form DWR 1-203.14)

New application approval and permit to proceed (**\$400 fee required by K.S.A. 82a-714(d) is attached**)

Make check payable to the Kansas Department of Agriculture

- Change in point of diversion (no fee). Change in place of use of water (no fee).
 Change in use made of water (no fee). A replacement/repair of previous flowmeter (no fee).
 Term permit (no fee). Other (e.g., special order of the Chief Engineer).

I, the holder of a permit issued by the Chief Engineer of the Division of Water Resources pursuant to the file(s) referenced in section 2, hereby certify that the information on sections 1-5 of this form is correct to the best of my knowledge.

Signature: _____ Date: _____ I.D. No.: _____
(mo / day / year) Social Security or Taxpayer

K.A.R. 5-1-1(y), defines diversion works as "all well(s), pump(s), power unit(s), power source(s), dam(s) and all other devices necessary to bring water under control for delivery to a distribution system by which the water will be distributed to the proposed use and any other equipment required . . . such as a check valve, water level measurement tube, meter or other measuring device."

If you have completed your diversion works as described above and completed the requirements as set forth in your Approval of Application, please complete this form. **If you are unable to meet the requirements stated on your approval, you must submit a request for extension of time (form DWR 1-203.15).** K.S.A. 82a-714(e) puts a \$100 fee on an extension of time to complete the diversion works. **Failure to notify the Chief Engineer of the completion of the diversion works within the time allotted can result in dismissal of the referenced file(s) and loss of priority date.**

If the subject file(s) authorizes multiple new points of diversion (PDs), you may photocopy this form (both sides) and submit one form for each new PD authorized. **An instruction sheet with sample entries is available as form DWR 1-203.14.**

Section 2 - Location of the Point of Diversion

The location of the point of diversion should be described as actually installed. The description should include the Section, Township, and Range, the 10-acre tract description (¼ ¼ ¼) and the footage from the SE corner of the section.

1. File No(s): _____ [If assisted by DWR: P/D ID _____ By: _____]

2. The date the diversion works were completed: _____, 20____.

3. The diversion works are located in the _____ Quarter of the _____ Quarter of the _____ Quarter of

(also described as _____ feet North and _____ feet West of the southeast corner of ...),

Section _____, Township _____ South, Range _____ East / West, in _____ County, Kansas.

If this is a change in point of diversion (PD), how was the PD being replaced identified? _____

4. Yes No Is a check valve installed? (Check valve is required when chemigating.)
5. Yes No If the source of supply is groundwater, is the water level measurement tube installed?
6. Yes No If the source of supply is a surface water reservoir, is a stage-measuring device installed?

Section 3 PRINT CLEARLY

Printed Name: _____

Address: _____

City, ST Zip: _____

Telephone: _____

FO GMD