



Since 1894

Date: February 14, 2025

To: House Committee on Agriculture and Natural Resources
Rep. Ken Rahjes, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: **HB 2114 AN ACT concerning water; relating to dams, levees and other water obstructions; clarifying which structures shall be considered water obstructions and not a dam; increasing application fees for a permit to construct, modify or add to a dam; requiring preconstruction permit fees to construct, modify or add to a water obstruction or to change or diminish the course, current or cross section of a stream; requiring any licensed professional engineer who conducts inspections required by the act to be approved by the chief engineer; adding a civil penalty of not less than \$100 nor more than \$1,000 per violation; remitting civil penalty amounts to the water structures fund.**

Position: Opponent, In-Person

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing nearly 5,700 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

Thank you, Chairman Rahjes, and members of the Committee, for allowing the Kansas Livestock Association (KLA) the opportunity to share our views on HB 2114. While KLA appreciates the efforts of the Kansas Department of Agriculture, Division of Water Resources (DWR) to work with regulated entities to make improvements to the bill prior to introduction, there remains some unresolved issues which require KLA to oppose HB 2114.

KLA policy includes several specific directives as it relates to DWR's water structures program. These concerns, which HB 2114 does not resolve, include the following issues:

1. The requirement for inspections if only the dam owner's home and property would be affected by a breach;
2. The reclassification of a dam's hazard class after a downstream property owner builds in the dam's inundation zone, and in such an instance, who should bear the responsibility for the cost of future inspections and repairs;
3. DWR entering private property without prior notice to conduct inspections; and
4. The lack of publicly accessible data on inundation zones below registered dams.

To that end, KLA has drafted several proposed amendments to HB 2114, which are attached to my testimony. The amendments attempt to resolve each of the above issues and additional issues discussed below.

Another issue of concern is imposing civil fines while retaining criminal liability for any violation of the act. KLA would suggest that it is inappropriate to retain criminal liability for a civil permitting and regulatory scheme, especially in instances where a dam owner may not have known about a violation or intended to violate the law. KLA recommends changing the first sentence of K.S.A. 82a-305a to read as follows: "Any person, partnership, association, corporation or agency or political subdivision of the state government who **intentionally** violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor."

In addition, KLA does not support using civil penalties to fund the water structures fund. Funding a segregated account that supports the activities of the water structures program creates the opportunity for an adversarial inspection process, especially in times of budget shortfalls. KLA suggests that civil fines collected under K.S.A. 82a-303b be deposited in the state general fund.

Finally, I would like to acknowledge a few items that DWR included in the bill with which KLA agrees. First, KLA appreciates that DWR retained the existing exceptions found in K.S.A. 82a-301(d). KLA also appreciates that DWR is offering the option for a dam owner to either pay a fee to DWR for the agency to conduct an inspection or allow the dam owner to hire "a licensed professional engineer approved by the chief engineer" to conduct the inspections. Depending on the dam, in certain circumstances, the private sector can provide the service at a lower cost.

KLA appreciates the opportunity to submit testimony as an opponent of HB 2114. If the Committee amends the bill to include KLA's suggested modifications, KLA will remove its opposition to the bill.

KLA Recommended Amendments to HB 2114

Amendment in regard to inspections of dams that only risk the property of the dam owner:

On page 5, line 23, insert the following paragraph after the period and renumber the subsequent paragraphs accordingly:

“(5) No dam shall be required to have a safety inspection conducted if failure of the dam would only endanger real property or fixtures to real property owned by the owner of the dam.

Amendment in regard to dams reclassified without any modification by the dam owner:

On page 5, line 23, insert the following paragraph after the period and renumber the subsequent paragraphs accordingly:

“(5) If a dam is reclassified to a higher hazard class dam by the chief engineer, and the reclassification is not caused by modifications to the dam by the dam owner, the chief engineer or an authorized representative of the chief engineer who is an employee of the department shall, without an additional fee to the dam owner, provide safety inspections required by this section which are in addition to the number of inspections that were required of the dam prior to the hazard class reclassification.”

Amendment in regard to advanced notice of entry onto private property:

On page 6, line 6, insert the following after the period:

“The chief engineer or an authorized representative of the chief engineer who is an employee of the department shall give thirty days prior written notice to the owner of a dam before accessing private property to conduct a safety inspection under this section.”

Amendment in regard to public notice of inundation maps:

On page 4, line 10, insert the following after the period:

“(d) The chief engineer shall complete inundation maps for all dams issued a permit and the inundation maps shall demonstrate areas that would be affected in the event of a dam failure. The chief engineer shall prominently display the inundation maps on the department website in a form easily understood by the public.”

Amendment in regard to use of civil penalty funds:

On page 7, line 1, insert the following after the word “section”:

“, except civil penalties collected pursuant to subsection (c),”

On page 7, line 4 insert the following after the period:

“(g) All moneys collected by the chief engineer pursuant to subsection (c) of this section shall be deposited in the state treasury in accordance with K.S.A. 75-4215, and amendments thereto, and shall be credited to the state general fund.”

On page 7, line 9, strike “K.S.A. 82a-305a” and insert the following:

“except K.S.A. 82a-303b(c),”.

Amendment in regard to criminal penalties for a violation:

In K.S.A. 82a-305a, insert the word “intentionally” immediately before the word “violates” in subsection (a).