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**Testimony on Substitute HB 2051
to
The Senate Natural Resources Committee
By Kim Christiansen
Kansas Department of Agriculture
March 14, 2013**

Good morning, Chairman Powell and members of the committee.

I am Kim Christiansen, assistant secretary and chief legal counsel with the Kansas Department of Agriculture. I am here to express KDA's support of House Bill 2051.

This proposed legislation will have five components to enhance water resources management:

- Section 1: creates a limited transfer permit to allow a short-term new uses with a corresponding reduction in the base water right;
- Sections 2, 3, 4, 5 and 6: clarifies and creates an exemption for approximately 25 percent of the dams currently under KDA authority as well as significantly increases exemptions of KDA's jurisdiction of other stream obstructions;
- Section 7: enhances the multi-year flex account program by creating an incentive for conservation;
- Section 8: clarifies LEMA review authority; and
- Section 9: repeals some outdated or unused laws.

The Substitute House bill before you reflects significant work by the House Committee on Agriculture and Natural Resources. A subcommittee met for several days and considered how to address a number of issues, including a competing bill, HB 2071. We believe the most changes made are very productive.

Conserving our state's water resources and continuously improving water stewardship are priorities at the Kansas Department of Agriculture. With your help and with support from Governor Brownback, we made significant progress in 2012 to shift the way we strategically approach water conservation and management in Kansas. There is more work to be done, however, and KDA is committed to building on the momentum in 2012 and taking more steps to increase flexibility and promote locally driven water conservation.

Conserving water for future use is imperative, but we must find a way to achieve water conservation goals to protect our resource, while at the same time maintain our economic activity. As such, KDA supports allowing a new "limited" transfer of an existing water right to allow a short-term new use with a corresponding reduction in the base water right. (Section 1)

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The proposed limited transfer will not permanently modify the base water right and allows water to be borrowed for a limited period of time. This tool would allow water to be appropriated for the new temporary use by using an offset from an existing water right. In sum, there is no new water under a limited transfer, protecting the status quo in an area of high decline or over appropriation thus protecting private property rights. These critical areas of concern will change over time and will be defined in rules. This tool could be used for a wide variety of purposes, including horizontally fracked oil exploration, construction or for municipal use. In areas of Kansas that are closed to new water rights, this limited transfer will enable individuals or business that do not have an existing water right and may have been totally prevented from operating in Kansas to choose to do business in our state.

Under the current administration, KDA has put its focus on customer service and helping our customers succeed rather than simply being a regulatory agency. The department has worked for more than two years reviewing regulations and statutes and eliminating those that are not necessary.

House Sub for HB 2051 makes several changes in the stream obstructions act, reducing the department's jurisdiction over less significant stream obstructions. To accomplish this, the bill puts in statute exemptions based on varied drainage areas across the state, which are larger than the current exemptions in regulations (Page 2, line 34). The bill adds an exemption for minor obstructions (Page 3, Line 5), and expands the exemption for projects in rural areas (Page 3, Line 13). KDA estimates that these exemptions will eliminate 20 percent of the stream obstruction permits currently required.

In this bill, KDA proposes an exemption in our statutes that reduces the number of dams required to obtain permits for construction. The agency will seek to focus regulation of dams based on risk in an effort to protect public safety. For low hazard dams less than 25 feet high, the requirement for a permit will be moved from 50 acre-feet to 75 acre-feet (Page 3, line 30). The revised bill keeps this in place. The bill also exempts from review confined animal feeding operation lagoons and dams that have KDHE review where the dam impounds less than 150 acre feet (Page 3, line 36). KDA estimates a reduction of 25 percent in dam jurisdiction from the proposals in this bill.

Section 7 (Page 7, line 42) provides an incentive to the Multi-Year Flex Account (MYFA) program, as revised by the 2012 Kansas Legislature. MYFAs provide water right holders a voluntary option to develop a five-year planning tool to strategically manage their water. Governor Brownback has made it a priority to extend the useful life of the Ogallala Aquifer and this is an aquifer neutral tool to help achieve his goal. In the first year of the revised MYFA program, KDA received approximately 750 applications.

KDA supports furthering enhancing the MYFA tool by giving water rights holders the ability to carry unused quantities of a MYFA over and roll into the next MYFA. The carryover quantity would be all of the unused allocation up to one-fifth of the calculated total quantity. This revision to the MYFA program will further improve this tool for water users in Kansas and will move us further down the road from the old "use it or lose it" mindset. The last acre-inches

available on a MYFA can become the first inches available on a new MYFA. This is incentive to manage the resource to save it for future use.

Section 8 clarifies review of a LEMA. (Page 11, line 33)

Finally, the following statutes were included in 2012 HB 2649, introduced by the Office of the Repealer. (Section 9, page 12, lines 16-20. The bill passed the House 124-0 but was gutted in the Senate. KDA would again like to repeal these obsolete statutes.

- KSA 24-105: Obstructing flow of surface water; application to build levee; contents; examination by engineer; permit; KSA 82a-312, KSA 82a-313: and KSA 82a-314 Dams built as part of the Federal Agricultural Conservation Program; KSA 82a-735: Sunflower Ammunition Plant.

In addition, the agency would like to add four additional water related-statutes to the repeal list

- KSA 24-106, KSA 24-107: Obstructing flow of surface water; application to build levee; contents; examination by engineer; permit;
- KSA 82a-740: Water appropriations by Douglas County Water Supply Districts: and
- KSA 74-509: Relates to the duties of the Irrigation Commissioner.

Thank you for the opportunity to speak with you today. I will stand for questions at the appropriate time.



