

**Testimony in Support of House Bill 2477  
to the House Committee on Water  
By Lane Letourneau, Water Appropriation Program Manager  
Kansas Department of Agriculture  
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Good morning, Chairman Minnix and members of the committee. Thank you for the opportunity to provide testimony in support of House Bill 2477. My name is Lane Letourneau, and I am the Water Appropriation Program Manager in the Division of Water Resources at the Kansas Department of Agriculture.

The Kansas Department of Agriculture, Division of Water Resources (KDA–DWR) is seeking amendments to K.S.A. 82a-1906, a provision of the Kansas Water Appropriation Act that governs when applications filed with and orders issued by KDA–DWR are required to be posted on the agency’s website. It also governs when a notice of filed applications has to be provided to nearby water right owners. HB 2477 aims to protect individual privacy and ensure that notice of new appropriations of water will be provided to all potentially affected water right holders while reducing application processing time.

A primary reason for these proposed amendments is the agency’s desire to better protect the privacy of individuals who submit certain applications to the agency. Currently, K.S.A. 82a-1906 provides that “applications” filed pursuant to three statutes (K.S.A. 82a-706b, 82a-708a, and 82a-745) must be posted on the Department’s website. This requirement is problematic because it requires KDA–DWR to provide unfettered public access to records that contain substantial personal information and that would otherwise not be required to be made public pursuant to the Kansas Open Records Act (KORA). KORA is intended to be construed broadly in favor of public access to records, but it provides for an exception to disclosure requirements for applications that are under consideration with an administrative agency. Due to existing statute, the agency is not able to avail itself of this exemption under the current requirements of K.S.A. 82a-1906 and is instead required to post pending water right applications (which almost always include phone numbers and email addresses) online in their entirety. This contravenes the public policy of the state as set out in KORA and in doing so potentially subjects applicants to interference with business plans, solicitation (prohibited under KORA), and even harassment from the public.

KDA–DWR is therefore recommending that rather than posting full applications on its website, the agency post a map showing the location of all proposed diversions and any other pertinent information related to the following applications:

- Applications for new appropriations of water filed pursuant to K.S.A. 82a-711; and
- Applications seeking to change a water right’s point of diversion by more than 300 feet pursuant to K.S.A. 82a-708b.

For all such applications, we will post the application number, the point of diversion location, the intended use of the water right, the proposed quantity, and the rate of diversion. KDA–DWR recognizes that there is a public interest in informing water right owners about proposed diversions of water of the type that will be covered by the amendment. The map contemplated by the proposed amendment aims to meet that interest while safeguarding the privacy of applicants. In addition, orders issued on such applications would be posted on the Department’s website and notice of such applications would be provided to landowners within a half mile of such a proposed point of diversion by KDA–DWR.

The primary reasons for the additional proposed amendments are to ensure that all potentially affected water right holders receive notice of the types of applications covered by the statute and to improve agency efficiency. Currently, the statute’s notice requirements apply to “water right owners” within a half mile of a proposed point of diversion. This language includes the owners of domestic water rights, but it excludes landowners who do not have any kind of water right.

An applicant is required to provide information regarding nearby domestic wells when they submit their application. This is often difficult for the applicant. While domestic water right holders may register with KDA–DWR, they are not required to register or obtain a permit, and most domestic water rights are not registered with the agency. Our team currently devotes significant time during the processing of an application simply trying to locate domestic water rights. This slows down the processing of water right applications, and, even after lengthy effort, the agency still has no way to be certain of the location of domestic water rights.

Proposed changes in subsection (c) of the statute would clarify that all landowners within half a mile of the proposed diversions covered by the statute must be notified. This will ensure all owners of domestic water rights receive notice while streamlining the agency’s process. We believe this will be a positive process, as we learn much information from our nearby notice contacts.

The proposed amendments to subsection (c) also remove the requirement that notice be provided by KDA–DWR in conjunction with the local groundwater management district and put the responsibility for notification solely on KDA–DWR. This is more practical and efficient since KDA–DWR is the entity responsible for approving or denying the types of applications covered by the statute. The information will still be available to GMDs and all public parties via the website.

KDA–DWR is also proposing to strike the existing reference to K.S.A. 82a-1906 from K.S.A. 82a-745, the statute that governs water conservation areas, to ensure that statute aligns with the changes being proposed to K.S.A. 82a-1906.

I believe that HB 2477 will protect the interests of Kansas water right owners and promote processing efficiency. Thank you for your time and I will stand for questions at the appropriate time.

**Addendum:** K.S.A. 82a-1906: Changes to Statutory References

## **K.S.A. 82a-1906: Changes to Statutory References**

The changes to the statutory references contained within K.S.A. 82a-1906 are proposed because those references currently either create redundant public notice requirements or simply do not make sense, and the current version of K.S.A. 82a-1906 does not invoke the statute that properly governs applications for new appropriations of water. Specifically, the current statutory references and the reasons for changing them are as follows:

- K.S.A. 82a-706b (currently listed in the statute) pertains to the impairment of prior water rights. That statute provides its own requirements for how notice of the Chief Engineer's determination of how to resolve an impairment is to be provided to the involved water right owners. K.S.A. 82a-717a, which also governs impairment procedures, provides additional notice requirements that govern in this area. The current reference to K.S.A. 82a-706b within K.S.A. 82a-1906 simply imposes duplicative requirements that slow agency processing time.
- The next statute referenced within K.S.A. 82a-1906, K.S.A. 82a-708a, does not provide for the filing of any application with or the issuance of any order by KDA-DWR as contemplated in K.S.A. 82a-1906 — it simply sets out the prescribed fee for the filing of a term permit to appropriate water. K.S.A. 82a-711, which substantively governs applications for new appropriations of water, is referenced in the proposed amendments instead.
- K.S.A. 82a-708b, the next statute listed, does govern water right change applications. However, not all change applications have the potential to impact nearby water rights. The proposed amendments make the notice requirements contained within K.S.A. 82a-1906 applicable only to applications to change a water right's point of diversion by more than 300 feet, as such changes do have the potential to move a point of diversion closer to an existing water right and increase the impact on that water right.
- Similarly, K.S.A. 82a-745 pertains to water conservation areas (WCAs), which do not have the potential to impact nearby water rights. WCAs are voluntary conservation tools that are required to *reduce* water use. When implemented as required, WCAs have only a positive impact on the static water level in their area. There is simply no reason to require notice of a WCA to be provided to nearby water right owners, and providing such notice simply slows down the agency's processing of water right applications.