



Testimony on HB 2272
to
House Committee on Agriculture and Natural Resources
by
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Chairman Powell and members of the committee, I am David Barfield, Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources (DWR). I appear before you today to oppose HB 2272 as it is overly complex, unclear, inconsistent with state law, and I believe there is a much simpler remedy to the problem it seeks to address.

By way of background, as Chief Engineer it is my duty to administer K.S.A. 82a-301 and following, which requires all nonfederal entities who wish to construct any dam or other water obstruction to obtain a permit from the chief engineer. In addition to dams, stream obstructions include bridges, culverts, intake or discharge structures and the like. The purpose of this authority is to ensure such works are built and maintained in a manner that is consistent with public safety and the protection of public and private property.

Within the existing statute and regulations, small dams (with less than 50 acre-feet of storage) and projects on minor drainages, ranging from 240 acres in eastern Kansas to 640 acres in western Kansas, are exempt from our permitting. Fundamentally, the proposed legislation seeks to expand the types of projects exempt from our regulation. So the questions before the committee are whether exemptions should be expanded and if so, whether this is the best approach.

Regarding the bill, HB 2272 is overly complicated and unclear, contains errors, and could increase risks to property damage and potentially public safety. For example:

- Much of its language comes from the federal Clean Water Act which is incompatible with Kansas' Obstructions in Streams law (e.g., see the definition of "minor drainage"). The federal law is focused on protecting water quality, while the state law is designed to protect Kansans' safety and property from the hydraulic effects of regulated activities in our streams and watercourses.
- It exempts discharges of dredged or fill materials related to farming, silviculture and ranching activities from authorization or permitting of the Kansas Water Office or DWR. Kansas Water Office does not have permitting authority.
- Stream obstructions for agricultural activities are not necessarily less hazardous or potentially damaging than stream obstructions for other land uses. A farm road stream crossing upstream from a county road or backing water onto someone's farmland may present the same hazards as a stream obstruction for any other purpose. It is the hydraulic properties of the stream and the stream obstruction, in addition to potential receptors in the area, which determine the hazards.

- It exempts stock ponds (what we normally call farm ponds) and temporary sedimentation basins from regulation under the Obstructions in Streams law. Where these structures are above residences and busy highways, they may present a risk to safety and property.

HB 2272 is also unnecessary. DWR is developing amendment to our rules and regulations, which are attached, to streamline permitting for minor stream obstructions where the contributing drainage area is sufficient to make the project jurisdictional. The streamlined requirements are basic and simple to complete, while providing sufficient information to allow us to accomplish DWR's responsibilities under the Obstructions in Streams law to protect Kansans' safety and property.

Thank you for the opportunity to express our concerns with the bill. I will stand for questions at the appropriate time.

K.A.R 5-42-15. Stream obstructions; miscellaneous projects; plans for projects with minimal impact. (a) Plans for a stream obstruction project that will have a minimal impact shall meet the application and plan requirements of this regulation, instead of those in K.A.R. 5-42-14.

(b) A stream obstruction project will be considered to have a minimal impact if it meets all of the following requirements. The project will not:

(1) Impound water on the property of a person other than the applicant if water is impounded up to the maximum elevation of the obstruction;

(2) accelerate water discharged from the project to a velocity that will cause erosion on the property of another;

(3) be seriously damaged or completely destroyed during bank-full discharge events; and

(4) impound water so that it will cause a rise in the elevation of groundwater on the property of another.

(c) To determine if the project will have a minimal impact, the applicant shall submit an application, including the information required in subsection (d), and a request for the chief engineer to determine if the project has only a minimal impact.

(d) The plans shall include all of the following information:

(1) A general location map, aerial photograph, or plan view showing all of the following information:

(A) The location of the stream;

(B) the point where the stream obstruction crosses the centerline of the stream; or for projects that do not cross the centerline of the stream, the point where the stream obstruction crosses the affected bank of the stream; specified in latitude and longitude, or in feet north and west of the southeast corner of the section;

(C) the layout of the stream obstruction including the principal dimensions;
(D) the property lines and the names and addresses of adjoining property owners; and
(E) section or quarter-section lines with sections properly identified, including township and range; and

(2) a typical cross section sketch showing:

(A) The top of the stream obstruction relative to the bed and each affected stream bank;
and

(B) the principal dimensions of the project.

(e) If the chief engineer determines that the project will have a minimal impact, the chief engineer shall notify the applicant that:

(1) The project will have a minimal impact; and

(2) the application and plans that have been submitted are sufficient to review the application. The chief engineer will then review the application to determine if it meets the other requirements of article 42 of these regulations.

(f) If the chief engineer determines that the project will have more than a minimal impact, or cannot determine if the project will have a minimal impact, the chief engineer will notify the applicant that the applicant is required to submit plans meeting the requirements of K.A.R. 5-42-14. (Authorized by K.S.A. 2009 Supp. 82a-303a; implementing K.S.A. 2009 Supp. 82a-302 and 82a-303a, effective P-_____.)