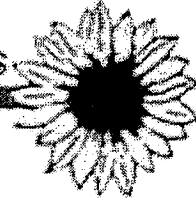




STATE ASSOCIATION  
OF KANSAS WATERSHEDS



Testimony By:

Herbert(Herb) R. Graves Jr.  
SAKW Executive Director

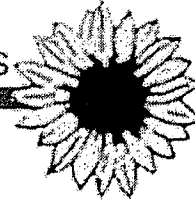
In Support of HR 6009

House Agriculture and Natural Resources Committee

Thursday, March 3, 2011



STATE ASSOCIATION  
OF KANSAS WATERSHEDS



Chairman Powell, Members of House Ag and Natural Resources,

SAKW stands in support of HR - 6009.

Section 404 of the Clean Water Act requires mitigation for any fill or dredging operations that adversely impacts the Waters of the US. Watershed Districts in Kansas understand and support reasonable mitigation of environmental impacts. Watershed dams can alter stream, woodland, and wetland ecosystems and must provide and protect mitigation measures that restore these environmental losses. A Section 404 permit must be issued by the Regulatory Authority, the US Army Corps of Engineers(Corps), before any watershed dam is constructed.

The proven way to protect these mitigation measures is to enter into agreements with landowners through conservation easements. The conservation easements states the parameters by which the landowner must agree to as far as the use and protection of the installed or protected mitigation measures.

The Corps, being the regulatory agency, requires that they not only be a third party to the easements, but they also must approve the final language of the easement to include the term by which the easement must remain in effect. Finally we get to the issue at hand.

The Corps stands fast on requiring the conservation easement be for a term of "perpetuity". SAKW, the watershed districts of Kansas, and most importantly the landowners of Kansas feel "the life of the project" is a more understandable and acceptable term for the easement. As long as the dam remains as a functioning structure ("life of the project"), the impacted streams, woodland, and wetlands must be offset by a preserved mitigation plan.

In most cases, landowners want to have some sense of conclusion when they sign away the rights of their lands for the use by others. "Perpetuity" just has no sense of termination to them. "The life of the Project" on the other hand does present a sense of conclusion because the dam is an object that they can see and relate to its existence.

After many months of back and forth debate, the Corps finally agreed to insert a kind of a SAKW exception clause in the easement language. The exception being the easement could be terminated if and when the dam would someday disappear and the landscape was returned to pre-dam days. The easement still had to be initially secured for perpetuity.

SAKW has presented its case to Col. Anthony Hofmann, Commander of the Kansas City District of the US Army Corps of engineers, who said, until regulation changes allowing such things as "life of the project" easements come down from a higher authority his hands are pretty much tied.

We have contacted Senator Roberts and Moran who both have expressed an interest in using this issue as one more example of federal regulations going beyond reasonableness and to see what could be done to accommodate Col. Hofmann's need for a higher directive.

With HR-6009 being approved and sent to the right people, it is hoped the Corps gets a very clear picture that their regulations are too rigid and lack good judgment.

SAKW appreciates the opportunity to present this written testimony and we wish your committee the best in the difficult days ahead.

Herbert R. Graves Jr.  
SAKW Executive Director