

From: Barfield, David [David.Barfield@KDA.KS.GOV]
Sent: Wednesday, February 23, 2011 6:42 PM
To: Dan Kerschen; Willie Prescott; Vince Wetta; Dennis Pyle
Cc: Wilson, Chris; Steve Swaffar; john@kla.org; Raney Gilliland; Graves, Paul
Subject: proposed substitute for HB 2272

Representatives Kerschen, Prescott, and Wetta, Senator Pyle and others,

As requested in response to the sub-committee's discussion, below is a proposed alternative to HB 2272 and explanation. It entirely replaces our previous proposed alternative. With this approach, we do not believe it necessary to define stream obstruction in statute. We also believe it straightforward enough to make the permit determination process previously drafted unnecessary (we still plan to move forward in regulations with a simpler permitting process for minor projects which would require permitting).

New sections, likely 82a-301(c) and (d)

(c) The prior written consent or permit of the chief engineer required by subsection (a) shall not apply to water obstructions that meet all of the following requirements:

- (1) The water obstruction is not a dam as defined in subsection (b),
- (2) The water obstruction does not permanently impound water,
- (3) The water obstruction is not located within an incorporated area,
- (4) The water obstruction is completely located in excess of 500 feet from any property boundary, and
- (5) The watershed area above the obstruction is 640 acres or less.

(d) In the event the chief engineer determines that it is necessary for the protection of life or property, a water obstruction that is not permitted pursuant to subsection (c) shall be required to be permitted as provided in subsection (a).

Here is some explanation on the proposal:

* We did NOT strictly limit the language to farm operations. The limitations to unincorporated areas and the required distances to adjacent properties will cause this "exemption" to be applied in rural areas and mostly to farm operations. However, we have a set of applications we expect to receive in the future for roads to access wind farms that we think can and should be exempted under these provisions.

* We have NOT limited it to culverts and low water crossings but instead have limited all stream obstructions we permit EXCEPT dams or structures that permanently impound water. We feel with the setback distances and other limitations, there should be little potential for impact to neighbors, except for dams and structures that impound water.

* We felt set back distances was the most straightforward and understandable way to minimize the potential for these projects to effect others. The proposed distance represents our judgment of the distance needed, at least for the vast majority of the cases, to prevent projects from backing water onto another property upstream and for the effect of projects to be minimized downstream.

* For this specific exemption, we are proposing a 640 acres drainage area statewide (we will still use the 240/320/640 acres for projects not meeting these requirements).

* Rather than a waiver or exemption of jurisdiction, section (c) allows a individuals wishing to construct projects meeting these requirements to do so without prior consent of the chief engineer. Section (d) states that if there is a problem, the chief engineer can require a permit. This was our understanding of the sub-committee's desire.

Raney, please forward this on to the appropriate committee staff.