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TESTIMONY

Date: February 25, 2013

By: Woody Moses, Managing Director
Kansas Aggregate Producers' Association
Kansas Ready Mixed Concrete Association

Regarding: House Bill 2363, An act concerning water and permitted activities

Before: The House Committee on Agriculture & Natural Resources

Good afternoon Madame Chair and Members of the Committee:

My name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association and the Kansas Ready Mixed Concrete Association. The Kansas Aggregate Producer's Association (KAPA) and the Kansas Ready Mixed Concrete Association (KRMCA) is a state wide trade association comprised of over 170 members located or conducting operations in all 165 legislative districts in this state, providing basic building materials to all Kansans. I appreciate the opportunity to appear before you today to express our support regarding HB 2363.

HB 2363, introduced at our request, is a bill designed to add a few technical changes to existing law and has no effect on general matters of policy. The bill modifies existing law in the following manner:

Section 1: Amends K.S.A. 65-171d the Confined Area Feeding Operations (CAFO) statutes to exempt aggregate operations. This is an exemption that is already granted to sand & gravel operations under K.A.R. 28-16-162 (j) with respect to sand & gravel operations and extends this exemption to other aggregate production operations such as rock crushing. Please note that granting such an exemption does not relieve these operations from regulation as the requirement for NPDES permits and stormwater permits still exist in other statute. It does however relieve the industry from the more stringent requirements under the CAFO statutes; which in some cases

has required our industry to use a clay liner to protect the groundwater from the washing of clay. While providing a clay liner is expensive the associated expenses for engineering and compliance is even more burdensome, threatening the economic viability of many small to medium quarries routinely serving the rural areas of the state.

Section 2: Amends K.S.A. 82a-734, the sand & gravel chapter contained within the Kansas Water Appropriations Act to clarify that the project permit authorized in SB 148 passed in the 2012 session applies to all sand & gravel projects on a statewide projects. With respect to this section attached we do have an amendment proposed by the Kansas Division of Water Resources (DWR) to make it even clearer.

Thank you for your time and consideration, I will be happy to respond to any questions you may have at the appropriate time.

HOUSE BILL No. 2363

By Committee on Agriculture and Natural Resources

1 AN ACT concerning water; relating to wastewater regulations; relating to
2 aggregate mining operations; amending K.S.A. 2012 Supp. 82a-734
3 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. Any rules and regulations adopted by the secretary of
7 health and environment pursuant to K.S.A. 65-171d, and amendments
8 thereto, shall not apply to land-based sand and gravel pits or aggregate
9 mining operations utilizing washwater ponds if the only water or
10 wastewater directed to the dredge pit or washwater pond consists of the
11 following:

12 (a) Dredge return flows;

13 (b) flows generated from aggregate classification; or

14 (c) flows from washing aggregate, if water used in such flows is
15 returned to the dredge pit or washwater pond.

16 Sec. 2. K.S.A. 2012 Supp. 82a-734 is hereby amended to read as
17 follows: 82a-734. (a) An operator shall notify the chief engineer of the
18 location and area extent of any existing or proposed sand and gravel pit to
19 be excavated, expanded or operated by the operator.

20 (b) The net evaporation of water exposed as the result of the opening
21 or operation of sand and gravel pits shall be construed to be a beneficial
22 use or diversion of water for the purposes of the Kansas water
23 appropriation act, K.S.A. 82a-701 et seq., and amendments thereto, if the
24 sand and gravel pit is opened or operated in a township where the average
25 annual potential net evaporation is greater than 18 inches per year, as
26 determined by the chief engineer.

27 (c) If the chief engineer determines that an existing or proposed sand
28 and gravel pit operation is a beneficial use of water, the operator shall
29 apply to the chief engineer for a permit to appropriate water in accordance
30 with the Kansas water appropriation act or otherwise acquire ownership or
31 control of sufficient water rights, or by other methods pursuant to rules and
32 regulations adopted by the chief engineer, or both, to offset net evaporation
33 for the operation. The chief engineer may reduce this required offset based
34 on the estimated use of groundwater by the existing vegetation.

35 (d) (1) The permit shall authorize net evaporation as the primary use,
36 and hydraulic dredging and sand washing as secondary uses of water if

Where the average potential net evaporation is less than 18 inches per year, as determined by the chief engineer, the chief engineer shall issue a single term permit for the life of the project for the secondary uses described herein.

- 1 such secondary uses are located within the same source of supply and are
- 2 associated with the operation. Any secondary uses shall use water in a
- 3 manner in which there is no significant net consumptive use. The permit
- 4 shall not be subject to the installation of a water flow meter or
- 5 administration of minimum desirable stream flow. ~~In areas of the state not~~
- 6 ~~subject to subsection (b), the chief engineer shall only issue a permit for~~
- 7 ~~secondary uses.~~
- 8
- 9 (2) The secondary uses shall be granted for the proposed life of the
- 10 project or until the exhaustion of sand and gravel reserves. At the end of
- 11 the industrial project, the owner shall file an application authorized by
- 12 K.S.A. 82a-708b, and amendments thereto, to change the primary use
- 13 made of water to recreational use to authorize the net evaporation use
- 14 caused by the exposed groundwater.
- 15 (3) If a permit is denied, the chief engineer shall set forth all reasons
- 16 for such denial.
- 17 (4) Any applicant who is denied a project permit by a final order of
- 18 the chief engineer under this section may appeal such order in the manner
- 19 provided by the Kansas judicial review act.
- 20 (5) Any application for a project permit shall be accompanied by a
- 21 filing fee of \$500 and any request for modification shall be accompanied
- 22 by a fee of \$250. Applicants for a project permit under this section shall
- 23 not be required to pay fees pursuant to K.S.A. 82a-708a and 82a-708c, and
- 24 amendments thereto, as part of such application.
- 25 (e) (1) The initial period of time allowed to complete construction of
- 26 diversion works pursuant to an approved application to appropriate water
- 27 for the purpose of net evaporation from a sand and gravel pit operation
- 28 shall be reasonable and consistent with the proposed use. The chief
- 29 engineer may allow extension of such period by not to exceed two 10-year
- 30 extensions if it can be shown that the operation requires the additional time
- 31 for the operator to satisfy the operator's market demand in the area. The
- 32 two 10-year extensions may be granted at the same time, to run
- 33 consecutively, if the applicant submits to the chief engineer a written
- 34 development plan.
- 35 (2) The period of time allowed to perfect an approved application to
- 36 appropriate water for the purpose of net evaporation from a sand and
- 37 gravel pit operation shall be not less than 20 years and, for good cause
- 38 shown, the chief engineer may allow one or more 10-year extensions of
- 39 such period. The chief engineer shall consider the time needed until
- 40 exhaustion of proven reserves, closure in accordance with the surface land
- 41 reclamation and mining act, K.S.A. 49-601 et seq., and amendments
- 42 thereto, and the availability of water for the proposed use, but in no case
- 43 shall allow longer than 80 years for perfection.
- (3) Nothing herein shall require an extension of time to construct

1 diversion works or to perfect a water right if there is demonstrable
2 impairment of a use under an existing water right from the same source of
3 supply, as determined pursuant to K.S.A. 82a-711, and amendments
4 thereto.

5 (4) Upon examination of the diversion works for sand and gravel
6 operations, the chief engineer or the chief engineer's duly authorized
7 representative shall, within 90 days of the examination, notify the
8 applicant if there was a failure to construct the diversion works at the
9 authorized location or any deficiency of the terms and conditions of the
10 permit. This notice will provide steps necessary to gain compliance with
11 state law. If the chief engineer fails to examine the diversion works within
12 two years of the notice of completion for any sand and gravel operation
13 diversion works, the applicant shall not be required to forfeit priority date
14 as a result of failure to construct a diversion works at the authorized
15 location or any deficiency of the terms and conditions of the permit.
16 (f) Net evaporation from sand and gravel pits, as calculated by the
17 chief engineer, will be reported as an industrial use to the director of
18 taxation for the purpose of assessing the water protection fee pursuant to
19 K.S.A. 82a-954, and amendments thereto.

20 (g) This section shall be part of and supplemental to the Kansas water
21 appropriations act.

22 Sec. 3. K.S.A. 2012 Supp. 82a-734 is hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the statute book.