

**Kansas Water Authority Meeting
Abilene Civic Center
Abilene, Kansas
April 18, 2019**

Agenda

<i>Time</i>	<i>Agenda Item</i>	<i>Presenter</i>	<i>KWA Advice</i>	<i>KWA Decision</i>	<i>Page No.</i>
10:00 a.m.	Call to Order/Introductions	Gary Harshberger			
10:05 a.m.	Approval of Meeting Minutes	Gary Harshberger			
	January 31, 2019 Meeting			X	1
10:10 a.m.	KWA PWS Committee	Dennis Schwartz			3
	City of Lawrence Draft Contract Discussion	Cara Hendricks	X		
	Marketing Rate CY2020	Cara Hendricks		X	
	Access District Updates	Cara Hendricks	X		
10:45 a.m.	KWA RAC Committee	Greg Graff			5
	Membership & RAC Messages to the KWA	Matt Unruh		X	
	2019 RAC Membership Timeline	Matt Unruh	X		
	Upper Ark Message	Fred Jones	X		
11:30 a.m.	Central Kansas Water Bank Assoc. Evaluation Update	Matt Unruh	X		
11:45 a.m.	Water Technology Farms	Armando Zarco	X		
	2018 Data Report				
12:15 p.m.	<i>BREAK for Lunch</i>				
12:45 p.m.	HAB Update	Trevor Flynn	X		
1:10 p.m.	Potential PFCs Regulation and Contamination	Leo Henning			
1:30 a.m.	Legislative & Budget Update	Karma Mason			6
	2020 Budget Process		X		
2:00 p.m.	Water Vision / Water Plan	Earl Lewis	X		9
2:30 p.m.	Overview of USGS Activities Nationally and in Kansas	Andy Ziegler			
2:50 p.m.	KWO/KWA Operations – Cooperative Agreements	Cara Hendricks			12
	<i>USGS Streamgaging Agreement</i>	Cara Hendricks		X	
	<i>USGS KS River Water Quality Monitoring Agreement</i>	Cara Hendricks		X	
	<i>USGS Neosho River Sediment Monitoring Agreement</i>	Cara Hendricks		X	
	<i>USGS Big Blue R. WQ/Sed. Monitoring Agreement</i>	Cara Hendricks		X	
	<i>USGS Clay Center WQ/Sed. Monitoring Agreement</i>	Cara Hendricks		X	
	<i>Corps Planning Assistance to States (PAS)</i>	Cara Hendricks		X	
3:00 p.m.	Federal Updates	Earl Lewis	X		15
	Kansas River Basin Study Update	Cara Hendricks	X		
	WOTUS Update	Leo Henning	X		
3:15 p.m.	Director's Report	Earl Lewis	X		
3:30 p.m.	New Business				
3:35 p.m.	Adjourn				

Upcoming Meetings: July 30-31 Goodland, KS

Minutes

KANSAS WATER AUTHORITY

January 31, 2019

Topeka, Kansas

Regular Meeting

CALL TO ORDER: Acting Chairman Dennis Schwartz called the **January 31, 2019** Kansas Water Authority meeting to order at **8:32** a.m. at the Ramada Inn, Topeka, KS

MEMBERS PRESENT: Dennis Schwartz; acting chairman; Mike Armstrong; Mark Fischer; Greg Graff; Calvin Kissick; Karma Mason; Lynn Wobker; David Barfield; Jim Butler; Dan Devlin; Brad Loveless; Ed Martinko; Leo Henning; Mike Beam; Rob Reschke; Patty Clark; Earl Lewis

MEMBERS ABSENT: Ted Nighswonger; Gary Harshberger; John Bailey; Randy Hayzlett; Alan King,

APPROVAL OF MINUTES:

Motion No. 01-19-01 It was moved by Mark Fischer and seconded by Mike Armstrong the **December 19, 2018** Minutes for the Regular Meeting of the Kansas Water Authority be approved as presented. **Motion carried with no dissenting votes.**

KWA/PWS Committee:

Council Grove Application & Request

Motion No. 01-19-02 It was moved by Mike Armstrong and seconded by Karma Mason to approve the Director of the Kansas Water Office to enter into negotiations with the City of Council Grove for a contract to withdraw and use water from Council Grove Lake for the purposes of serving the City of Council Grove.
Motion carried with no dissenting votes.

KWA/PWS Committee:

City of Lawrence Contract update

Cara Hendricks presented.

KWA/PWS Committee:

Bathymetry Program Update

Richard Rockel and Chris Shultz presented.

KWA/RAC Operations Committee:

RAC Message to the KWA

Motion No. 01-19-03 It was moved by Greg Graff and seconded by Mike Armstrong to approve the proposed resolution for the RAC Message to the KWA from the Missouri RAC
Motion carried with no dissenting votes.

KWA/RAC Operations Committee:

2019 RAC Membership Timeline

Matt Unruh provided an update.

Legislative Update:

RAC Training

Earl Lewis provided an update.

Water Vision Research-Sorghum:

Sarah Sexton-Bowser presented.

KS Dept. of Wildlife, Parks and Tourism:

Ed Miller presented on behalf of the KDWPT.

Lieutenant Governor, Lynn Rogers:

Lt. Gov Lynn Rogers spoke.

Federal Updates:

Section 1122 Proposals

Matt Unruh provided an update.

Federal Updates:

Milford Lake Watershed RCPP

Matt Unruh provided an update

Federal Updates:

Republican River Updates

David Barfield provided an update regarding Interstate Water Compacts

Director's Report:

Presented by **Earl Lewis**

New Business:

Adjournment

The KWA adjourned at **12:01** p.m.

MEMO



DATE: April 15, 2019
TO: Kansas Water Authority
FROM: Dennis Schwartz, Chair, Public Water Supply Committee
Cara Hendricks, P.E.
RE: Public Water Supply Committee Update

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The following summarizes the goals of the KWA Public Water Supply Committee (PWS Committee) with regard to the items presented herein:

Action Items:

- Set the CY 2020 Water Marketing Variable Rate

Informational Items:

- City of Lawrence Draft Marketing Contract Update
- 2019 PWS Comprehensive Capital Development Plan Draft/Update
- Access District Updates

Water Marketing Program Variable Rate for Calendar Year 2020

At the meeting held on April 11, 2019, the PWS Committee acted to recommend that the KWA set the Calendar Year (CY) 2020 water marketing variable rate at \$0.418/1000 gallons, which is a 3.2% increase from the CY 2019 rate. This rate increase is consistent with the projected water marketing program variable rate included in the previously approved 2017 Public Water Supply Comprehensive Capital Development Plan (CCDP). The 2017 CCDP can be accessed through the “Reservoir” tab at KWO’s website at www.kwo.ks.gov.

The table below indicates the 5-year projected water marketing program variable rate recommended by the PWS Committee, and as included in the 2017 CCDP.

Calendar Year	2017	2018	2019	2020	2021	2022
Variable Rate	\$0.38	\$0.392	\$0.405	\$0.418	\$0.431	\$0.445
Increase	n/a	3.2%	3.2%	3.2%	3.2%	3.2%

The PWS Committee further recommends that a portion of the annual marketing revenue be utilized to pay down debt and to fund reservoir protection and restoration projects as described in the 2017 CCDP.

Based on the PWS Committee action on April 11, 2019, the PWS Committee recommends that the Kansas Water Authority set the CY 2020 Water Marketing variable rate at \$0.418/1000 gallons.

City of Lawrence Draft Marketing Contract Update

Contract negotiations continue between the Kansas Water Office and the City of Lawrence. On February 6, 2019, KWO staff attended a meeting with the City of Lawrence and the water marketing customers from Clinton Lake to further discuss the draft contract and to address questions and concerns regarding the process. It is anticipated that a draft contract will be ready for review at the July KWA meeting.

2019 Public Water Supply Program Comprehensive Capital Development Plan (CCDP) Update

The CCDP includes several components that require updating. These include adjustments to O&M costs based on updates provided by the Corps of Engineers, forecasted water use projections based on actual reported use, reflections of debt payments made, and other program changes. KWO staff presented portions of the draft 2019 CCDP at the April PWS

Committee for preliminary discussion. A complete updated 2019 CCDP is anticipated to be provided to the PWS Committee at its July meeting for review.

Access District Updates

Lower Smoky Hill Access District

The Lower Smoky Hill Water Supply Access District inquired about the availability of additional water supply storage in Kanopolis. On February 6, 2019, KWO personnel provided modeling results with expanded Access District demands. Results indicated that storage is sufficient to meet the potential additional demands without fully committing the remaining water supply storage in Kanopolis. The Access District has not submitted a formal request to negotiate a purchase contract. If and when a formal request is received, the KWO Director will need to obtain approval from the KWA to commence negotiations.

Lower Republican River

Following resolutions passed by the Republican River Compact Administration that allowed for additional water management options, a group of interested surface and groundwater irrigators formed an Ad hoc board attempting to moderate impacts to their crops when Minimum Desirable Streamflow (MDS) is administered on the Republican River. Working closely with local Division of Water Resources (DWR) staff, the group ran through multiple scenarios on how a potential new Access District could provide them relief. Multiple obstacles remain before the group can become a viable entity, including the establishment of how to access water storage, protection of water releases within Nebraska, and where and when water would be available for delivery and use.

These items are for information only. No action is needed at this time.

MEMO



DATE: April 15, 2019
TO: Kansas Water Authority
FROM: Greg Graff
RE: KWA RAC Operations Committee

The KWA RAC Operations Committee met on April 15, 2019, via conference call. Discussion from the meeting included the following topics:

- RAC membership application for the Upper Arkansas RAC
- 2019 RAC Membership Drive

RAC Membership

One applications has been received to fill a current vacancy on the Upper Arkansas RAC. The following membership recommendation for the full KWA was discussed and approved by the RAC Operations Committee:

- Upper Arkansas RAC:
 - Appoint applicant Hal Scheuerman of Deerfield to the currently vacant Surface Water Irrigation position which expires in 2021.

2019 RAC Membership Drive

Discussion also took place regarding the currently active RAC membership application drive for RAC positions with 2019 term expirations. Currently, KWO have reached out to all members with 2019 term expirations to inform those individuals of their respective expiring terms and to inquire about their interest in having them name under consideration for reappointment on the RAC. An initial notification of the open application period went out in the latest edition of *The WaterFront* and extensive notifications of the open call for applications from all interested individuals will go out to partner agencies/organizations as well as media by May 1. Applications will be accepted through May 31 and the full KWA will take action on the membership recommendations of the RAC Operations Committee at the July 30-31 KWA meeting in Goodland.

*The KWA RAC Operations Committee recommends KWA approval
of the proposed RAC membership action for the Upper Arkansas RAC.*

MEMO



DATE: April 16, 2019
TO: Kansas Water Authority
FROM: Karma Mason
RE: KWA Budget Committee

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In lieu of a meeting the following details were provided to the Budget Committee members on April 12th:

1. Planned FY2021-2022 SWPF Budget Process
2. 2019 legislative action and FY2020 SWPF Budget

FY2021 KWA SWPF Budget Process Review

Last year, the KWA Budget Committee had a lengthy discussion on the SWPF budget process. The committee recommended that in developing funding requests, agencies should focus funding to priority projects that are in the Vision and Regional Advisory Goals Action Plans. The KWA Budget Committee recommends the following outline for FY2021 & FY2022.

FY2021-2022 KWA SWPF Budget Process

April

- KWA finalizes budget process
- KWA sets appropriation target
 - Fees only
 - SGF/EDIF restoration (or part thereof)
 - Pursuing BRFTF recommendation funding or other funding alternatives
- Guidance on priorities / areas of funding

May

- Agencies develop funding requests
 - Vision or RAC Goal Action Items identified
- Agencies convene to develop recommendations to KWA Budget Committee

May-June

- Research Coordination Group meets to develop research funding recommendations
- Recommendations provided to agencies and KWA Budget Committee

June

- KWA Budget Committee meets to develop draft recommendations

June-July

- RAC's review budget recommendations and suggest changes if necessary

July-August

- KWA Budget Committee finalizes recommendations to full Authority
- Full KWA acts on recommendations

September

- KWA SWPF budget recommendations are submitted as part of administration budget process

Legislative Action on SWPF for FY2020

During the current session legislative action only included FY2020 budget review and appropriations, the following table reflects the increases/decreases to the Governor's budget recommendation made by the House and Senate Conference Committee.

Agency/Program	FY2020 KWA Recs	FY2020 Gov Recs	FY2020 Senate/House Adjustments	FY2020 Conference Committee
Department of Health and Environment				
Contamination Remediation	\$ 1,091,394	\$ 691,394	\$ 396,907	\$ 1,088,301
TMDL Initiatives	\$ 278,029	\$ 278,029		\$ 278,029
Nonpoint Source Program	\$ 303,208	\$ 303,208		\$ 303,208
Harmful Algae Bloom Pilot	\$ 450,000	\$ 450,000		\$ 450,000
Watershed Restoration and Protection Strategy	\$ 730,884	\$ 730,884		\$ 730,884
Drinking Water Protection Program	\$ 350,000	\$ -	\$ 350,000	\$ 350,000
Total--KDHE	\$ 3,203,515	\$ 2,453,515	\$ 746,907	\$ 3,200,422
University of Kansas--Geological Survey	\$ 26,841	\$ 26,841	\$ 0	\$ 26,841
Department of Agriculture				
Interstate Water Issues	\$ 497,386	\$ 497,386		\$ 497,386
Sub basin Water Resources Management	\$ 619,692	\$ 619,692		\$ 619,692
Water Use	\$ 72,600	\$ 72,600		\$ 72,600
Water Resources Cost Share	\$ 1,948,289	\$ 1,948,289	\$ 500,000	\$ 2,448,289
Nonpoint Source Pollution Asst.	\$ 1,860,023	\$ 1,860,023		\$ 1,860,023
Aid to Conservation Districts	\$ 2,092,637	\$ 2,092,637	\$ 100,000	\$ 2,192,637
Watershed Dam Construction	\$ 550,000	\$ 550,000		\$ 550,000
Water Quality Buffer Initiative	\$ 200,000	\$ 200,000		\$ 200,000
Riparian and Wetland Program	\$ 154,024	\$ 154,024		\$ 154,024
Water Supply Restoration Program-				
Water Transition Assistance/CREP	\$ 201,963	\$ 201,963	\$ 100,000	\$ 301,963
Irrigation Technology	\$ 400,000	\$ 100,000		\$ 100,000
Crop and Livestock Research	\$ 250,000	\$ 250,000	\$ 100,000	\$ 350,000
Streambank Stabilization	\$ 500,000	\$ 500,000		\$ 500,000
Real Time Water Management	\$ 125,000	\$ -		\$ -
Total—KDA	\$ 9,471,614	\$ 9,046,614	\$ 800,000	\$ 9,846,614
Kansas Water Office				
Assessment and Evaluation	\$ 500,000	\$ 500,000	\$ 200,000	\$ 700,000
MOU - Storage Operations & Maintenance	\$ 410,000	\$ 410,000		\$ 410,000
Stream Gaging	\$ 423,130	\$ 423,130		\$ 423,130
Technical Assistance to Water Users	\$ 325,000	\$ 325,000		\$ 325,000
Vision Education Strategy	\$ 250,000	\$ 100,000		\$ 100,000
Reservoir and Water Quality Research	\$ 350,000	\$ 350,000		\$ 350,000
Water Tech Farms	\$ 150,000	\$ 75,000		\$ 75,000
Watershed Conservation Practice Imp	\$ 1,800,00	\$ 900,000	\$ (200,000)	\$ 700,000
Equus Beds Chloride Plume Project	\$ 100,000	\$ 50,000		\$ 50,000
Milford Lake Watershed RCPP	\$ 600,000	\$ 200,000		\$ 200,000
Streambank Stabilization	\$ 500,000	\$ -		\$ -
Water Injection Dredging	\$ 1,500,000	\$ -		\$ -
Total--KWO	\$ 6,908,130	\$ 3,333,130	\$ 0	\$ 3,333,130
Total State Water Plan FY2020 Funding	\$ 19,610,100	\$ 14,860,100	\$ 1,546,907	\$ 16,407,007

Legislative Action on SGF Requests for FY2020

The Department of Agriculture requested two position enhancements in FY2020, however the funding was not recommended by legislation. Although, the Conference Committee did recommend the Kansas Water Office's request to increase SGF for the Water Resource Planner position previously funded from the SWPF in FY2019.

Funding Agency	Program/Project	KWA FY2020 Recommendation	FY2020 Funding
KDA	Interstate Water Engineer	\$ 100,000	\$ 0
KDA	Water Structures Professional Engineer	\$ 100,000	\$ 0
KWO	Water Resource Planner	\$ 100,000	\$ 100,000

Additionally, the Department of Agriculture also requested \$325,000 from SGF to make up shortfalls in the Water Appropriations Program budget, in which the Conference Committee did recommend \$100,000.

The KWA Budget Committee is expected to meet in the upcoming months to discuss and review agency funding recommendations for FY2021 and FY2022.

MEMO



DATE: April 15, 2019
TO: Kansas Water Authority
FROM: Earl Lewis
RE: Vision and the Kansas Water Plan

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In January 2015, *The Long Term Vision for the Future of Water Supply in Kansas* was completed to provide a long-term planning framework to address declines of the High Plains/Ogallala Aquifer, decreasing reservoir water supply storage lost due to sedimentation as well as other items tied to water conservation, water management, technology & crop varieties, and additional sources of supply. Governor Kelly recognizes the value of the water resources of Kansas and for the economic prosperity of the state and has expressed the desire to initiate a process to help measure implementation progress and make necessary adjustments to help the long-term success of water resource planning efforts within Kansas. As we approach the 5 year anniversary of the Vision it is now time to evaluate progress made on implementation to this point, identify new water resource issues, update and develop new Regional Goals and Actions Plans, and incorporate these items into the Kansas Water Plan.

Starting today and over the course of the coming months a process will be initiated with the following proposed strategic objectives in mind:

- Evaluation of progress made and make changes based on implementation results to date
- Identification of additional issues and/or topics not previously addressed
- Identification of priority regional water resource projects
- Reorganization of Vision and incorporation of action items into the Kansas Water Plan

Included within this proposed process will be the opportunity for local stakeholders to provide input on local water resource issues, including those which might not be currently accounted for in the current Vision or associated regional goals and action plans. Development of new or modifications to existing regional goals and action plans are to be expected from this process, as well as evaluation of the statewide Vision document for reorganization and consolidation purposes. Ultimately, this process will yield a merged Vision/Kansas Water Plan document with will be utilized to help guide the water resource planning efforts of Kansas.

An accompanying concept paper further describing this process is included within meeting mailing materials.

Additional information on this process will be shared with the full KWA at future meetings.

This is for informational purposes only. No Kansas Water Authority action necessary at this time.

**The Long-Term Vision for the Future of Water Supply in Kansas:
A Concept for Reorganization
and Incorporation into the Kansas Water Plan**

In January 2015, *The Long Term Vision for the Future of Water Supply in Kansas (Vision)* was completed to provide a long-term planning framework to address declines of the High Plains/Ogallala Aquifer, decreasing reservoir water supply storage lost due to sedimentation as well as other items tied to water conservation, water management, technology & crop varieties, and additional sources of supply. As we approach the five-year anniversary of the *Vision* it is now timely to evaluate progress made on implementation to this point, identify new water resource issues, develop new Regional Goals and Actions Plans, and incorporate these items into the *Kansas Water Plan*. The following document outlines a draft concept for these actions to take place.

PROPOSED STRATEGIC OBJECTIVES

- Evaluate progress made and make changes based on implementation results to date
- Identification of additional issues and/or topics not previously addressed
- Identification of priority regional water resource projects
- Reorganization of *Vision* and incorporation of action items into the *Kansas Water Plan*

PROPOSED CORE PRINCIPLES

- Ensuring Each Citizen has Reliable Water Supply
- Conserving and Extending the High Plains Aquifer
- Securing, Protecting and Restoring our Kansas Reservoirs
- Improving our State's Water Quality
- Developing and Maintaining our State and Local Water Infrastructure
- Develop a Long-Term, Affordable & Sustainable Method to Provide Financing for Implementation of the *Kansas Water Plan*

PROPOSED PROCESS

- Provide the opportunity for local stakeholders to engage:
 - Hold public input meetings within each of the 14 Regional Planning Areas
 - Provide feedback from public meetings to Regional Advisory Committee (RAC) for each Regional Planning Area. Once feedback is evaluated RACs will:
 - Determine if new/revised Regional Goals are necessary for the region.
 - Determine if new/revised Regional Goal Action Plans are necessary.
 - Develop new Regional Goals and Actions Plans with support from the Kansas Water Office (KWO).
 - Present new Regional Goals and Action Plans to the Kansas Water Authority (KWA) for review and approval.

- Identify Priority Projects Necessary to Make Implementation Progress.
- Maintain a statewide view on issues which impact multiple regions or the state as a whole:
 - KWO staff conduct status review of all statewide action items within *Vision*.
 - The KWA, with support from KWO staff, will review and approve new/revised Regional Goals and associated Action Plans.
 - The KWA, with support from KWO staff, will review all Regional Goals and Action Plans to evaluate for consolidation of implementation efforts which impact multiple regions.
 - The KWA will review input provided by RACs on identified priority projects in development of budget recommendations provided to the Governor and Legislature.
- Merging of *Vision* and *Kansas Water Plan*:
 - Once new/revised goals and action plans have been developed and approved, KWO staff will draft document, highlighting long-term water resource priorities of Kansas as well as shorter term implementation priorities.
 - Draft document will be presented to RACs for review and concurrence.
 - Following RAC concurrence, draft document will be presented to KWA for concurrence.
 - Following KWA concurrence, there will be public hearings
 - After public hearings and KWA review of hearing comments/testimony, document will be completed and utilized to help guide water resource planning efforts of Kansas

PROPOSED TIMELINE

- **Spring 2019:** Current RAC Implementation Progress Report shared with each RAC
- **Late Spring-Early Summer 2019:** RACs provide input to KWA on SFY 2021 budget recommendation development process and begin preliminary discussions on modifications to Regional Goals and Action Plans.
- **Late Summer-Early Fall 2019:** Public input meetings held and RACs begin process of developing new/revised Regional Goals and Action Plans if determined necessary
- **Fall 2019-Winter 2020:** RACs provide recommendations to KWA on new/revised Regional Goals and associated Action Plans
- **Winter-Summer 2020:** Reorganization and incorporation of *The Long-Term Vision for the Future of Water Supply in Kansas* and the *Kansas Water Plan* completed. RACs provide input to KWA on priority projects from each region to move implementation efforts forward



DATE: April 15, 2019
 TO: Kansas Water Authority
 FROM: Earl Lewis, Cara Hendricks
 RE: Federal Cooperative Agreements – Streamgaging, Kansas River
 Water Quality Monitoring, Neosho River Sediment Monitoring,
 Monitoring on Kansas River Below Tuttle Creek Lake, Monitoring
 on Republican River at Clay Center above Milford Lake (USGS) and
 Kansas River Sediment Management/Water Injection Dredging
 (WID) Study (Corps PAS)

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There are five potential agreements between the KWO and U.S. Geological Survey (USGS) for review and consideration by the Kansas Water Authority (KWA) and one potential Planning Assistance to States (PAS) agreement between the KWO and the Corps of Engineers. Approval by the KWA, under KSA 74-2622, is required before the Kansas Water Office (KWO) enters into agreements with the federal government.

Streamgaging Network (USGS)

The USGS, in cooperation with the KWO and other cooperators, maintains streamgages across the state. Under this Joint Funding Agreement (JFA), funding for the streamgaging program will be provided for FY 2020. Streamgages provide near real-time information about stream and river conditions. This information is used daily by numerous local, state and federal agencies and research entities to plan, protect and conserve water resources.

The non-federal contribution to cover the part of costs necessary to continue operations in FY 2020 will total \$413,580 from the SWPF. As a portion of the administration and enforcement costs to the public water supply program, Water Assurance Districts pay for the streamgages that monitor flow in the Assurance Districts, and Water Marketing will pay for streamgages that monitor flow within marketing customer areas. These equal two gages per WAD and Marketing Program. Final agreement will be determined after further discussions with USGS.

Kansas River Water Quality Monitoring (USGS)

Through a Joint Funding Agreement, the USGS, KWO, KDHE, and the Nature Conservancy, along with the cities of Manhattan, Topeka, Olathe, and Water District No. 1 of Johnson County plan to continue the Water Quality Monitoring agreement to characterize the sources, frequency and causes of cyanobacteria and associated toxins and taste-and-odor compounds in the Kansas River. This contract includes the operation of water-quality monitors on the Kansas River at De Soto, Wamego, and Topeka, routine sample collection at these 3 sites over a range of hydrologic conditions, event-based sample collection at reservoir outflows, and development of statistical relationships between collected samples and sensor values. This cooperative study is also evaluating the opportunity for an advanced notification system with sufficient lead time to alert water suppliers that use the Kansas River as a source of water supply of changing water quality conditions that may affect treatment processes or cause cyanobacteria-related toxin and taste-and-odor events.

The final scope and agreement for this year's monitoring will be determined after further discussions with the overall group and USGS.

Neosho River Sediment Monitoring (USGS)

Through a Joint Funding Agreement, the KWO and USGS will include continued operation of up to four water quality monitors and suspended sediment sampling at Plymouth, Burlingame Road, Neosho Rapids, and Burlington. The sites at Plymouth, Burlingame Road and Neosho Rapids are used to evaluate the efficacy of streambank stabilization efforts on the Upper Neosho and Cottonwood rivers as well as the overall sediment load entering John Redmond Reservoir. The Burlington site was used to monitor the downstream effects of continued dewatering of the confined disposal facilities from the dredging project and continues to be used to monitor the overall sediment load released from John Redmond Reservoir.

The proposal is still being scoped, and the non-federal contribution to cover the cost of the necessary field and analytical work directly related to this program will not exceed \$100,000 from the KWO in FY 2020.

Continuous and Discrete Water-Quality Monitoring on Big Blue River below Tuttle Creek Lake (USGS)

Through a Joint Funding Agreement, the KWO and USGS will collect water-quality and sediment data at the established streamflow station on the Big Blue River near Manhattan, Kansas, approximately 2.5 river miles downstream of the Tuttle Creek Lake outflow. The Tuttle Creek Water Injection Dredging (WID) demonstration project, as proposed by the Corps of Engineers to increase reservoir storage, may affect downstream turbidity and suspended-sediment concentrations as disturbed bottom sediment is displaced and exits the reservoir. The purpose of the monitoring to be performed through this agreement is to provide an understanding of baseline turbidity and water quality conditions downstream of the lake, and to evaluate changes in water quality and suspended sediment concentrations caused by water-injection dredging activities.

The proposed agreement is for a multi-year study. For Year 2 (SFY 20), the following major tasks are proposed:

- Operate and maintain a water-quality station at the USGS streamflow station on Big Blue River near Manhattan, Kansas, to measure temperature, specific conductance, turbidity, dissolved oxygen, and colored dissolved organic matter (fDOM)
- Collect, process and review monthly sediment, total and dissolved organic carbon, and nutrient samples at Big Blue River below Tuttle Creek Lake

The proposal is still being finalized. The estimated non-federal contribution to cover the Year 2 (FY 2020) scope totals \$44,100 from the KWO.

Continuous and Discrete Water-Quality Monitoring on Republican River at Clay Center (USGS)

Through a Joint Funding Agreement, the KWO and USGS will collect water-quality, nutrient, and sediment data at the established streamflow station on the Republican River at Clay Center, Kansas. This data will provide an understanding of baseline suspended-sediment, nutrient, and water-quality conditions on the Republican River at Clay Center, the primary inflow into Milford Lake and closest streamgaging site not to experience backwater conditions from the lake. This will allow for better understanding of sediment and nutrient concentrations, and characterization of water-quality conditions entering Milford Lake. This agreement helps to expand the monitoring network currently supported by the USGS, KWO, KDHE and communities along the Kansas River as part of the overall Kansas River Water Quality Monitoring study, and also supports monitoring efforts associated with the Milford RCPP project.

The proposed agreement is for a multi-year study. For Year 2 (SFY 20), the following major tasks are proposed:

- Operate and maintain a water-quality station at existing USGS streamflow station at Clay Center to measure temperature, specific conductance, pH, dissolved oxygen, and turbidity
- Collect, process and review biweekly (May – Oct) and monthly (Nov – Apr) sediment and nutrient samples on the Republican River at Clay Center

The proposal is still being finalized. The estimated non-federal contribution to cover the cost of the necessary field and analytical work directly related to this program is \$82,000 from the KWO in FY 2020.

Kansas River Sediment Management/WID Study (Corps PAS)

The U.S. Army Corps of Engineers-Kansas City District has funding available for a Planning Assistance to States (PAS) agreement related to the Kansas River. The study would cover continued research and planning activities to support the Tuttle Creek Water Injection Dredging (WID) demonstration project, as proposed by the Corps of Engineers to increase reservoir storage. Possible tasks to be part of the study scope include, but are not limited to:

- Water Injection Dredging (WID) monitoring plan finalization
- Preliminary WID prototype design for the demonstration
- Environmental/regulatory preparation for the WID demonstration
- ‘Turbidity Needs’ Workshop
- Incoming sediment monitoring at Kansas River Basin reservoirs
 - Collect sediment concentration and gradation data to develop flow/sediment rating curves
 - Establish baseline data to better estimate future conditions and assess sediment management options
- KWO bathymetric surveys (WIK)

KWO is continuing to work with the Corps to refine the scope and study costs. At this time, it is anticipated to be a one-year agreement that will not exceed a total of \$200,000, with KWO providing a combination of cash and work in kind (WIK) for its share. Final agreement will be determined after further discussions with the Corps.

The Kansas Water Office recommends KWA give approval to the Director to enter into agreements with the U.S. Geological Survey for the Streamgaging Network, Kansas River Water Quality Monitoring, Neosho River Sediment Monitoring, Monitoring on Republican River at Clay Center above Milford Lake, Monitoring on Kansas River Below Tuttle Creek Lake, and with the Corps of Engineers for the Kansas River Sediment Management/WID Study.



DATE: April 15, 2019
 TO: Kansas Water Authority
 FROM: Earl Lewis, Cara Hendricks
 RE: Federal Updates - Kansas River Reservoirs Flood and Sediment Study

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The Federal Cost Share Agreement (FCSA) for the “Kansas River Reservoirs Flood and Sediment Study” was executed on March 25, 2019, and the Kansas Water Office (KWO) has provided the initial cash payment of \$25,000 to initiate work on the study. The Kansas Department of Wildlife, Parks and Tourism (KDWPT) was added as co-sponsor of the study prior to its execution. The study is planned to be completed over 3-5 years, with total funding of \$3 million and a required 25% non-federal sponsor cost share of \$750,000. Scoping discussions for the project are ongoing, but topics of interest that have previously been identified and will remain a focus going forward include water supply availability and sustainment, flood risk management, sediment loading of reservoirs, water quality issues and drought.

The KWO and KDWPT recently met with the Corps to begin discussing the overall goals and objectives of the study, identifying key partners and their associated roles and responsibilities, and planning for stakeholder coordination and outreach. The meeting also included discussion of the major milestones and the overall anticipated study timeline/schedule.

Below are the general Corps six-step watershed planning process, study milestones, and overall anticipated study progression.

- Six-Step Watershed Planning Process
 - Identify Problems and Opportunities
 - Inventory and Forecasting
 - Identify and Screen Measures
 - Formulate Initial Array of Strategies
 - Refine Initial Array and Evaluate Focused Array of Strategies
 - Strategy Comparison and Selection
- Study Milestones
 - Shared Vision Milestone
 - Recommendations Milestone
 - Final Watershed Plan
- Anticipated Study Progression
 - Draft PMP Development (to include goals, objectives, and shared vision statement and a communications plan)
 - Initial Round of Stakeholder Coordination and Public Outreach Meetings
 - Initial Baseline and Existing Conditions
 - Identify Conceptual Measures/Alternatives
 - Screen Conceptual Measures/Alternative
 - Preparation of Study Summary Document
 - Shared Vision Milestone Meeting
 - Recommendations Milestone Phase
 - Final Watershed Plan Milestone Phase

Figure 1. Watershed Study Process



This memo is for informational purposes only. No KWA action is necessary at this time.



April 15, 2019

David Ross
Assistant Administrator for Water
U.S. Environmental Protection Agency
William Jefferson Clinton Federal Building
Washington, D.C. 20460

R.D. James
Assistant Secretary of the Army for Civil
Works
108 Army Pentagon
Washington, D.C. 20310-0108

Re: Revised Definition of "Waters of the United States," EPA-HQ-OW-2018-0149

Dear Administrator Ross and Assistant Secretary James:

The water resource agencies of the State of Kansas appreciate the effort and outreach of the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers regarding their proposed new definition of "Waters of the United States" (WOTUS) under the Clean Water Act (CWA). We agree with the perspective from the Federal agencies that this issue is not about determining the ecological value of any water that may require protection in Kansas, but rather establishing a clear demarcation of CWA jurisdiction between the Federal agencies and the environmental authorities held by the State of Kansas among waters of the State. We believe the proposed rule aligns with existing Kansas law and water quality standards. We have several comments that may help clarify the intent of the Federal agencies, and thus, assist the implementation of the proposed definition in administering the CWA in Kansas.

Tributaries

By far the greatest change in the proposed rule from the 2015 rule is the exclusion of ephemeral streams from Federal jurisdiction. Kansas currently operates with a pre-2015 rule application of the definition of WOTUS, owing to the preliminary injunction issued for Kansas and ten other States in *Georgia v. Pruitt*. The Federal agencies acknowledge that under pre-2015 practice, ephemeral streams were not categorically jurisdictional. Certain ephemeral stream might be considered jurisdictional based on a significant nexus analysis by the Corps, however, the proposed rule would negate the results of such an analysis and deem that ephemeral stream as lying outside Federal jurisdiction.

Kansas State law, at K.S.A. 82a-2001(a)(2), similarly excludes ephemeral streams from being considered "classified stream segments": "*Classified stream segments other than those described in subsection (a)(1)E shall not include ephemeral streams; grass, vegetative or other waterways; culverts; or ditches.*" Kansas water quality standards apply narrative and numeric

Revised Definition of "Waters of the United States," EPA-HQ-OW-2018-0149

criteria to classified surface waters, those waters that support one or more designated uses defined within the standards. Narrative criteria apply to all waters of the State, regardless of classification. Thus, ephemeral streams are protected by Kansas from, among other threats, the harmful effects of substances that originate from artificial sources of pollution, including hazardous materials such as toxic substances and infectious microorganisms which jeopardize the public health or the well-being of livestock, domestic animals, terrestrial wildlife or aquatic or semiaquatic life.

Subsection (a)(1)(E) of the same statute allows for an ephemeral stream to be considered a classified stream segment if it receives a discharge from a National Pollutant Discharge Elimination System (NPDES) permitted facility: *"Classified stream segments shall include all stream segments that are waters of the state..., that: are at the point of discharge on the stream segment and downstream from such point where the department has issued a [NPDES] permit other than a permit for a confined feeding facility..."*.

Thus, Kansas will protect an ephemeral stream, if it receives pollutants from a regulated permitted discharge, by applying numeric criteria and effluent limits to that discharge, regardless of the hydrologic regime of the receiving stream. Permitted discharges under NPDES include any treated wastewater or stormwater, regulated either through individual permits or Notices of Intent under general permits. Additionally, the statute allows for a stream segment to be considered a classified stream segment if it is *"actually inhabited by threatened or endangered aquatic species listed in rules and regulations promulgated by the Kansas department of wildlife, parks and tourism or the United States fish and wildlife service; (K.S.A. 82a-2001(a)(1)(C))*. Should an ephemeral stream segment be demonstrated to provide habitat for such species, it could be considered as a classified stream segment. Furthermore, as ephemeral segments trend toward some degree of intermittent flow, they would be protected as classified stream segments if, under K.S.A. 82a-2001(a)(1)(D)(i): *scientific studies conducted by the department show that during periods of flow less than one cubic foot per second stream segments provide important refuges for aquatic life and permit biological recolonization of intermittently flowing segments;..."*.

Analysis by staff at the Kansas Department of Health and Environment of the stream network covered by the National Hydrographic Database (NHD) at a map scale of 1:24,000, indicates that the network has an extent of 183,266 stream miles. Perennial streams make up 16.7% or 30,632 miles of that universe. Conversely, truly ephemeral streams make up 0.17% or 313 miles. The balance of 152,321 miles comprises intermittent streams. Thus, the impact of the proposed rule based on digital mapping is quite small. However, serious questions arise over how representative NHD coverages are to actual hydrologic conditions on the Kansas landscape. Land use changes, regional ground water withdrawals and shifts in precipitation and evapotranspiration patterns have eroded away the base of presumed intermittent streams, thereby increasing the number of ephemeral streams beyond what NHD represents.

Because of the ecological importance of intermittent streams and their vulnerability to alteration of their seasonal flows, the technical debate regarding WOTUS has shifted from significant nexus determinations and ecological connectivity to distinguishing intermittent streams from ephemeral streams. An in-house analysis of six streams that have exhibited varying degrees of low or no flow reveals the complexities of making that distinction. **Appendix A** shows historic hydrographs for dry periods on these streams as well as the flow and channel conditions seen on these reaches when visited for Use Attainability Analyses. While each stream reach tells a unique story, one conclusion is that making determinations of ephemeral waters is not a tabletop exercise that can be accomplished in Federal offices. Gathering of hydrologic, geologic and biological information along with site visits are necessary to make the right call as to whether a given stream reach falls within or outside Federal jurisdiction under the proposed rule. Drawing a bright policy line of jurisdiction between intermittent and ephemeral streams does not translate to an equally bright technical line to determine hydrologic regime.

We would suggest that in adopting the proposed rule's definition for tributaries, the Federal agencies also adopt a process that would lead to the most expedient and correct determination of whether a stream is intermittent or ephemeral. That process would start with a rebuttable presumption that a stream reach in question is intermittent. While the ecological value of ephemeral streams spans a broad array of significance, increasing with proximity to more permanent flowing waters, there is no doubt that intermittent streams in Kansas provide critical ecological support to aquatic and semiaquatic life that justifies raising such streams onto the mantle of Federal jurisdiction.

When a presumed intermittent stream reach is the subject of a jurisdictional determination, the Federal agencies should trigger a rapid consultation with the Kansas water agencies to ascertain whether the stream reach in question is, in fact, intermittent or ephemeral. If the State advises that it is the latter, the Federal agencies may regard the situation as lying outside their jurisdiction and leave it to the State to address any outstanding concerns on impacts to the stream reach. The Kansas water agencies have decades of experience noting the hydrologic condition of any stream reach in the State. Annual observations of water table elevations, precipitation, streamflow and evapotranspiration patterns, information on stream order and supporting drainage area, active surface water rights and water use reports, site visits for biological surveys or use attainability analyses, noted presence of habitat supporting threatened and endangered species, observations of pooling suggestive of intermittent flows and presence of regulated facilities and activities can all be collated by the State to give the Federal agencies an expedient determination on the hydrologic regime of the targeted stream reach. In the spirit of the proposed rule's use of a "typical year", this determination will reflect the current conditions that would typically be expected at the stream reach. Temporary runoff from recent rains or dewatering impacts such as diversions or impounding would be discounted.

This process embodies the spirit and intent of Cooperative Federalism in the CWA. The Federal agencies call on their State counterparts to advise and consult on jurisdictional matters and State agencies, in turn, provide their specialized expertise to guide the Federal agencies as to the appropriate assignment of regulatory responsibility. Some issues will be easily resolved, others will require some deliberation before making a flow regime determination. Regardless, the consultation process should not overly delay expedient decisions, and more importantly, will be rooted in sound science and empirical observation, thereby arriving at the correct conclusion.

We have noticed discussions on the rule tend to lump ephemeral, intermittent and headwater streams into a single category that would be threatened if the proposed rule came to pass. The truth is, the distinction between such streams occurs at a finer resolution which defies generalization and expedient off-site determinations, such as relying on NHD coverages. The process we suggest presents a pragmatic implementation of the policy put forth by the proposed rule: ephemeral streams should remain solely in the realm of State jurisdiction.

Typical Year

Much of the proposed rule depends upon determinations made to reflect conditions in a "typical year". The Federal agencies intend to compute a typical year as having rainfall in the previous three months lying between the 30th and 70th percentiles established from a rolling 30-year average generated from National Oceanic and Atmospheric Administration (NOAA) data. We support the concept of viewing stream through the lens of typical conditions but submit that the intended calculations can be simplified. Even though rolling averages discount the influence of extreme weather, by definition, they lack stability, i.e., with each year of new data, the rolling average values change. Two or more interested parties may arrive at different conclusions on what would be viewed as typical, depending upon the endpoints of their 30-year averaging period.

To simplify the definition of typical year, we would suggest using NOAA's regional climatic normals, which reflect a fixed 30-year period of precipitation data. Those normals are adjusted at the beginning of each decade, e.g., the current normals are computed from data collected over 1981-2010; the next recalculation will be made in 2021, using data from 1991 – 2020. These values are fixed by NOAA and available for all to use, thereby eliminating the introduced variability of moving the average computation each year. Recent precipitation at a stream reach of interest can be judged against these fixed normals on a monthly or annual basis, which were derived by a disinterested party with no inherent bias on the outcome of the calculations (NOAA). **Appendix B** displays the current normal monthly precipitation values for the nine climatic divisions in Kansas obtained from NOAA and the variability of monthly normal values across four decades for two of the divisions, showing the relative stability in calculated normal rainfall values.

Ditches

The proposed rule excludes most ditches from Federal jurisdiction, except for those ditches that are Traditional Navigable Waters (TNW), ditches constructed within tributaries and ditches constructed within adjacent wetlands. We support the proposed rule's limited treatment of ditches as jurisdictional waters. While there are no TNW ditches in Kansas, there have been instances where natural tributaries have been ditched to expedite the movement of water away from surrounding lands. As stated under the tributary portion of the proposed rule, such alteration does not change the jurisdiction status of the tributary and we would view the ditched reach as part of the tributary remaining under Federal jurisdiction. Because of frequent connection during higher flows, we would also view the original tributary channel, e.g., oxbows and meanders, as WOTUS. Additionally, many managed wetlands in Kansas, which we view as Federally jurisdictional waters, utilize ditches to move water among marshes and wetland cells. The ditches within those wetland complexes are viewed as part and parcel of the complex of wetland areas and should be viewed as WOTUS.

The universe of ditches in Kansas comprise irrigation ditches, roadside ditches, and rural and urban drainage ditches, all with the intended purpose of conveying water from a source, e.g., Arkansas River or U.S. Bureau of Reclamation reservoir, to a place of use or, conversely, shunting water away from lands that are meant to be dryland. Again, Kansas law at K.S.A. 82a-2001(a)(2), excludes ditches as classified stream segments: "*Classified stream segments, ..., shall not include ephemeral streams; grass, vegetative, or other waterways; culverts; or ditches.*" We support the proposed rule as consistent with State law and providing further clarity on the exclusion of most Kansas ditches from Federal jurisdiction. The inclusion of tributary and wetland ditches as WOTUS is consistent with current Kansas practice, because those ditches are within waters held in the public trust.

All other ditches are locally managed or privately held conveyances which should not be subject to Federal oversight as WOTUS or point sources. In most cases, the water that is conveyed by these ditches, e.g., irrigation return flows, rural and agricultural runoff, is exempt from CWA regulation. Ditches conveying wastewater or stormwater regulated by a NPDES permit are treated as part of the conveyance and outfall delivering those wastewaters to a receiving stream. Intersection of a new ditch with a jurisdictional river or reservoir may trigger permitting such as 404, but the point of emphasis would be mitigating impacts to the river or reservoir, not the ditch itself.

Impoundments

Nearly all lakes and ponds in Kansas are actually impoundments. Many of these are viewed as classified waters, subject to the full extent of the CWA. However, farm ponds are considered private waters lying outside the scope of the CWA. K.S.A. 65-171d(d) notes: "*...If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir or pond is under common private ownership, such freshwater reservoir or farm pond*

shall be exempt from water quality standards ...”. The proposed definition specifically excludes farm ponds and we support that position. Conversely, we view Federal, State and local reservoirs as jurisdictional because of their public standing and ability to support the Section 101(a) uses of the CWA. As stated in the proposed rule, impoundment of a jurisdictional water does not change the status of that water, i.e., an impounded intermittent stream remains Federally jurisdictional, whereas the impoundment of an ephemeral water lies outside that jurisdiction.

We support that position but caution the Federal agencies that it is hypothetical that situations may arise where an ephemeral stream is impounded, and the impoundment sufficiently retains enough sporadic, Springtime runoff that it eventually augments downstream reaches with releases from stored water. Those reaches include both the non-jurisdictional ephemeral stream immediately below the dam but also jurisdictional intermittent and perennial reaches farther downstream. In that case, the impoundment begins to meet one of the criteria cited under the Lakes and Ponds provision of the proposed rule to consider in designating jurisdiction: the contribution of intermittent or perennial flow to an (a)(1) water [TNW], through an (a)(2) water [tributary]. The construction of the impoundment may have occurred outside the scope of the CWA, but its existence and downstream contributions have now converted the impoundment into a WOTUS. The transition, through releases from storage, of the ephemeral reach immediately downstream into an intermittent stream, i.e., WOTUS, also needs clarification.

Watershed structures in Kansas present a unique situation in jurisdiction determinations under the proposed rule. These watershed structures, typically supported through programs of U.S. Department of Agriculture and the Kansas Department of Agriculture – Division of Conservation, provide watershed protection, flood prevention, limited recreational and economic benefits at the local level. These structures impound streams that may be intermittent or ephemeral and we foresee much technical debate as to whether the stream they impound is intermittent (thereby, jurisdictional) or ephemeral (thus, excluded). There are consequences in determining jurisdiction because current watershed structures require permits under Section 404 and are charged with providing mitigation to offset impacts to the stream system.

Interstate Waters

We understand the rationale for eliminating the category of “interstate waters” within the definition of WOTUS. Most interstate waters in Kansas will be identified as WOTUS through the traditional navigable waters, tributary or impoundment categories. However, some level of Federal presence is warranted on waters serving as a border between two or more States, such as the Missouri River. It is likely that multiple States sharing a border defined by a stream will have different water quality standards applied to that stream within their portion of the stream. Some Federal oversight will be needed to referee conflicts that arise among States with different water quality standards applied to the same stream.

A traditional role for EPA is to arbitrate the application of diverse standards to a shared water course. Furthermore, the rules implementing the CWA designate a role for EPA in interstate matters to determine if an upstream State's water quality standards would unduly affect the water quality standards of a downstream State, pursuant to 40 CFR 131(b). Additionally, under Section 401(a)(2) of the CWA, EPA must stand ready to determine if an upstream State NPDES permit would cause a downstream State to violate its water quality standards. While removal of the interstate category under WOTUS has merit and such waters are likely covered by other categories under the proposed rule, EPA needs to reaffirm it retains other authorities and responsibilities in interstate matters under the CWA. Failing to do so, leaves open the possible argument that EPA lacks standing or jurisdiction when reconciling water quality standards or permitting issues on shared waters between States.

Adjacent Wetlands

The proposed rule defines adjacent wetlands that abut or have a connection to other jurisdictional waters as WOTUS pursuant to *SWAANC* and the Justice Scalia argument in *Rapanos* limiting the scope of Federal jurisdiction on isolated wetlands. The proposed rule states that when wetlands are physically separated from jurisdictional waters by upland or by dikes, barriers, or similar structures and lack a direct hydrologic surface connection to jurisdictional waters, those wetlands are not adjacent. In Kansas, isolated wetlands such as playas, have not been and would not be considered WOTUS, separation occurring because of uplands. However, there are managed wetlands that have historically been connected to streams but now have a water control gate at their inlet. We would not view the presence of that gate as severing the direct connection with other jurisdictional waters, thereby threatening the status of the wetland as WOTUS. We request the Federal agencies be more explicit on their view of barriers and structures isolating wetlands to allow for water control structures in wetlands without triggering the separation and isolation of the wetlands.

Many remaining wetlands in Kansas are riparian wetlands abutting along stream courses. Over 99% of the land in Kansas is held in private hands and the bed and banks of most streams in Kansas are considered private. So, even with clarifications of the new proposed rule, there will likely be friction and conflicts between the Federal agencies and private landowners over activities impacting those privately held, adjacent wetlands. This will occur under Section 404 permitting reviews, since Kansas effectively prohibits 402 permitted discharges into natural wetlands. Since many of these activities will be rural in nature, reconciling what would be considered normal agricultural operations remains a task for the Federal agencies to sort. We would request the Federal agencies coordinate with the Kansas Department of Agriculture to further define the "normal and ongoing farming, silviculture and ranching activities" exempt from 404 permitting under Section 404(f)(1).

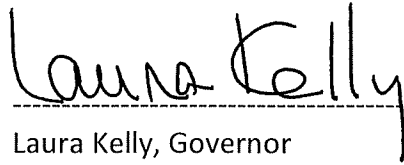
Exclusions

The State agencies appreciate the explicit exclusions to WOTUS presented in the proposed rule and support those specific examples. We roundly support the exclusion of ground water, in any fashion, from being considered WOTUS. Kansas protects its ground water resources through its water appropriation act, its Groundwater Management Districts and by its water quality standards which identify ground water recharge by injection or infiltration as a designated use of many surface waters in the State. As private waters, we reiterate our support to exclude artificial lakes and ponds constructed in uplands, especially farm and stock watering ponds. As previously discussed, most ditches and ephemeral features should not be considered WOTUS. Pragmatically, diffuse runoff, artificially irrigated areas, upland pits, stormwater controls and water recycling features are clearly waters that lie outside the jurisdiction of the CWA and are best managed by State and local authorities.

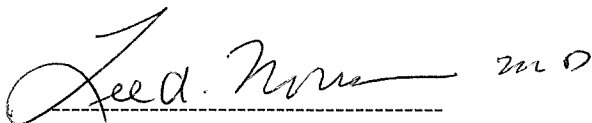
Summary

In summary, Kansas supports much of the proposed definition and exclusions identified in the proposed rule as it aligns itself squarely with Kansas law. Kansas water quality standards clearly define and protect "waters of the State" comprising *"all surface and subsurface waters occurring within the borders of the state or forming part of the border between Kansas and one of the adjoining states."* We believe our State authorities and programs provide an adequate level of protection for waters of the State, which can be aided by the judicious application of the Federal 402 and 404 permitting programs. We can work within the proposed rule and its definitions to appropriately administer the CWA. Notwithstanding the clarification provided by the proposed rule, there awaits much technical work to accurately ascertain the hydrologic status of certain streams, particularly in the western half of Kansas. We have outlined a process we believe will implement jurisdictional determinations under the proposed rule in partnership with the Federal agencies. We stand ready to help the Federal agencies in administering the Clean Water Act in Kansas.

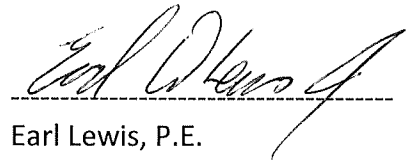
Sincerely,



Laura Kelly, Governor
State of Kansas



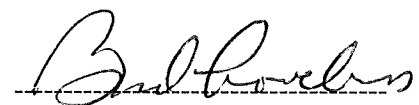
Lee Norman, M.D.
Secretary
Kansas Department of Health
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