



**House Committee on Agriculture and Natural Resources  
Testimony on Senate Bill 122  
Easement Authority on State Property for Conservation Projects  
March 7, 2011**

Chairman Powell and members of the Committee, I am Earl Lewis, Assistant Director of the Kansas Water Office (KWO). Thank for the opportunity to appear before you today in support of Senate Bill 122, which provides the KWO Director with the authority to work with landowners adjacent to our three navigable rivers on projects proposing to stabilize the rivers' beds and banks.

Kansas and US law is well settled that the State owns the bed and banks, up to the ordinary high water mark, of the three navigable rivers in Kansas; the Arkansas, Kansas, and Missouri. The U.S. Supreme Court has held that the bed and banks in all navigable rivers are owned by the states. See *United States v. Holt State Bank*, 270 U.S. 49 (1926). Kansas Supreme Court rulings parallel those of the US Supreme Court. See: *Murray v. State*, 226 Kan. 26 (1979); *Fowler v. Wood*, 73 Kan. 511 (1906). Navigability is defined according to these cases as well: the stream must be navigable in fact, in its natural condition, as a highway of commerce, at the time of statehood. See *Shively v. Bowlby*, 152 U.S. 1 (1894).

As a result, a riparian landowner (one who owns land along a navigable river in this case) needs an explicit grant of property from the state to access the river up to its banks for activities that include construction and maintenance of structures or to reshape the banks. Normally, this is accomplished by legislation, wherein the Secretary of State grants the easement to the landowner, allowing him access to the state's property along the river. Senate Bill 122 proposes to streamline the process for conservation projects by allowing the Water Office Director to grant the easements, after consulting with other state agencies and a comment period, on behalf of the state of Kansas.

The impetus for the proposed legislation stems from recent project proposals along the Kansas River. Four riparian landowners initiated funding requests from the USDA, Natural Resources Conservation Service and requested Stream Obstructions Act Permits from the Kansas Department of Agriculture, Division of Water Resources for bank stabilization projects. In each of these four instances, funding contracts with NRCS were terminated and permits were unable to be issued because the applicant (riparian landowner) was not the legal owner of the entire project area that includes state property below the ordinary high water mark.

The Legislature has, in the past, provided easements to both public and private interests along navigable rivers in the state:

- K.S.A. 82a-315 allowed the City of Topeka to construct diversion works on the Kansas River. (1987)
- K.S.A. 19-3521b grants an easement to Johnson County Water District No. 1 to construct diversion works on the Kansas River. (2006)
- K.S.A. 82a-212 granted Douglas County an easement on an island in the Kansas River. (1980)
- K.S.A. 82a-213, the state granted the City of Lawrence a park and recreation easement along the Kansas River. (1980)

- K.S.A. 82a-214 allowed a private company, MBPXL, to construct diversion works along the Arkansas River.(1981)
- K.S.A. 82a-218 granted Finney County an easement to construct a crossing on the Arkansas River. (1997)

The concept of legislation that would allow a state agency authority to grant an easement for limited purposes, as outlined in SB 122, is not unique. In K.S.A. 74-4551, the Legislature authorized the State Park and Resources Authority to grant an easement for access to a structure. K.S.A. 12-2711 grants the Secretary of Transportation broad authority to grant right of ways to municipalities who have contracted to provide a common supply of water for lay pipes, conduits and other infrastructure. K.S.A. 75-2131 allows an agency head whose agency controls land to grant public utility easements without legislative approval.

Successful passage of SB 122 will allow these and subsequent landowners to apply for funding and receive permit consideration for projects providing mutual benefits to the landowner and the state of Kansas. In the case of the Kansas River, bed and bank degradation is a serious concern and is a priority issue in the Kansas Water Plan.

Thank you, again, for the opportunity to appear before you today in support of Senate Bill 122. I will stand for questions at the appropriate time.