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Jackie McClaskey, Secretary

Governor Sam Brownback

Mr. Chairman, my name is Susan Metzger and I serve as an Assistant Secretary for the Kansas Department of Agriculture. Thank you for the opportunity to appear today to provide our support for S.1140, the Federal Water Quality Protection Act.

In March we had the opportunity to appear before the Senate Committee on Agriculture, Nutrition and Forestry to share Kansas' perspective on the negative impacts of the Federal rulemaking on Waters of the United States on Kansas water management. S.1140 addresses many of the concerns expressed by States, including Kansas, in response to the draft rule.

With this legislation, the States, as primary implementers of the Clean Water Act, will play a more appropriate and necessary role in crafting a rule that clearly defines Waters of the United States. S.1140 recognizes the shortcomings of the original engagement put forth by the Federal agencies by promoting renewed Federalism and proper coordination with the States before publication of the rule.

For Kansas, the opportunity for public hearings in different geographic regions, especially in the arid west, is important. Rainfall in western Kansas averages 15 inches per year, generating little runoff and making connectivity in our western stream network tenuous and episodic. In requiring consultation with the Governors and state water resource agencies, this bill recognizes the variability and uniqueness of each State's hydrology and invites the Federal agencies to use existing State expertise to determine which marginal waters fall under Federal jurisdiction.

S.1140 clearly establishes groundwater and isolated ponds should not be defined as Waters of the United States. Of particular significance to Kansas is the exclusion of stream reaches that do not contribute flow in a normal year to downstream navigable waters, a typical situation in Western Kansas. As part of that policy, the legislation requires the establishment of quantifiable measures to determine the volume, duration and frequency of normal flows that constitute significant downstream contributions. We encourage the Federal agencies consult with western state water resource agencies and use their in-house knowledge of water availability when establishing these measures.

In Kansas' comment letter to the agencies regarding the proposed rule, we identified the increased costs that would be incurred by the state with the expansion of waters requiring monitoring and assessment. The letter also identifies other indirect cost impacts related to a rise in third party litigation, increases in mitigation for impacts, and changes in permitting conditions for pesticide and land waste application. S.1140 appropriately addresses this concern in requiring an analysis of both direct and indirect costs and evaluating the potential for an unfunded mandate.

Of paramount importance, this bill acknowledges that an exclusion of waters from Federal jurisdiction does not mean such excluded waters lack protection through State regulation and management. Kansas has a track record of progressive and innovative protection of the important waters of the state, whether under Federal jurisdiction or not, noting that not all waters are equally important. As an example of our state approach, Kansas ranks 2<sup>nd</sup> in the nation in sediment reduction and 6<sup>th</sup> in the nation for phosphorous reductions through best management and conservation practices. Allowing for States administrative discretion without ubiquitous, counter-productive Federal oversight, ensures the critical waters of the State, as well as the Nation, will be protected.

Mr. Chairman, the proposed legislation addresses the most significant concerns shared by the state of Kansas in response to the proposed rulemaking on Waters of the U.S. Thank you for the opportunity to share Kansas' perspective and support for the Federal Water Quality Protection Act.