



**Watershed District
Administration**

Financial Guidelines

Board Meetings

**Cost-Share
Administration**

Construction

Dam Rehabilitation

Inundation Maps

**Watershed District
Law & Other Legal
Information**

*Kansas Department of
Agriculture
Division of Conservation*

*1320 Research Park Drive
Manhattan, KS 66502
785-564-6620
agriculture.ks.gov/DOC*

Division of Conservation

Watershed District Handbook

May 2020



1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

MEMORANDUM

From: Hakim Saadi, P.E., Program Manager 

To: Watershed District Partners

Date: May 4, 2020

RE: Watershed District Handbook

The Watershed District Handbook has been developed to provide Watershed Districts a source of information in carrying out governmental responsibilities as they relate to state program assistance.

This new version of the Handbook - **DOC WATERSHED DISTRICT HANDBOOK, MAY 2020** - supersedes the 2008 version. We ask that you discard the older version.

The Kansas Department of Agriculture, Division of Conservation (DOC) has provided the new version of the Handbook on its website.

The information in this Handbook is offered as a guide and should not be used as a substitute for rules and regulations or statutory authorities.

WATERSHED DISTRICT HANDBOOK

TABLE OF CONTENTS

<u>CHAPTER</u>	<u>TITLE</u>
1.	WATERSHED DISTRICT ADMINISTRATION
2.	FINANCIAL GUIDELINES
3.	BOARD MEETINGS
4.	COST-SHARE ADMINISTRATION
5.	CONSTRUCTION
6.	DAM REHABILITATION
7.	INUNDATION MAPS
8.	WATERSHED DISTRICT LAW and LEGAL INFORMATION

1. Watershed District Administration

Kansas Department of Agriculture, Division of Conservation.....	1-3
Introduction.....	1-3
Watershed Dam Construction Program Overview	1-3
State Association of Kansas Watersheds (SAKW).....	1-4
Legal Status	1-5
Annual Meeting (K.S.A. 24-1211)	1-5
Regular / Special Meetings (K.S.A. 24-1212).....	1-6
Number of Directors (K.S.A. 24-1210)	1-6
Qualifications for Election (K.S.A. 24-1202).....	1-7
Election of Directors (K.S.A. 24-1211).....	1-7
Oath of Office (K. S. A. 54-106 and 75-4308).....	1-7
Term of Office (K.S.A. 24-1210)	1-8
Vacancies on Board of Directors (K.S.A. 24-1211).....	1-8
Director’s Expenses (K.S.A. 24-1210)	1-8
Mileage Allowance	1-8
Obtaining New Board Members	1-8
Organization of the Watershed District Board.....	1-9
Guidelines for Increasing Participation and Effectiveness of a Board	1-10
Contracting Officer / Manager.....	1-11

Kansas Department of Agriculture, Division of Conservation

The Kansas Department of Agriculture, Division of Conservation (DOC) works to protect and enhance Kansas' natural resources through the development, implementation, and maintenance of policies, guidelines, and programs designed to assist local governments and individuals in conserving the state's renewable resources.

The DOC was established in 2011 by an Executive Reorganization Order (ERO) signed by Governor Brownback. This ERO transitioned the State Conservation Commission into the DOC. The State Conservation Commission was established by the Kansas Legislature in 1937 to promote soil and water conservation. The SCC consists of nine members with an elected commissioner from each of the five conservation areas; two ex-officio members representing KSU Research and Extension; one appointed member representing the Kansas Department of Agriculture (KDA) and one appointed member representing the USDA, Natural Resources Conservation Service (NRCS).

The DOC has the responsibility to administer the Conservation Districts Law (K.S.A. 2-1901 et seq.), the Watershed District Act (K.S.A. 24-1201 et seq.) and other statutes authorizing various programs. The agency budget is financed from the dedicated funding of the State Water Plan Special Revenue Fund, State General Fund, and fee funds.

The division operates several subprograms that tie to the mission of the DOC and to many stated goals of the Kansas Water Plan. One of the goals of the DOC is to administer efficiently those subprograms that enhance and protect the state's natural resources. The agency pursues this goal by working with the 105 conservation districts and 74 organized watershed districts, other local, state and federal entities.

Introduction

This handbook is primarily designed for watershed districts; however, drainage districts will find some value in sections 1 and 2 and will use sections 3 through 8 when applying for state cost-share assistance. This handbook has been developed to provide districts a source of information in carrying out governmental responsibilities as they relate to state program assistance.

This new version of the Handbook- **DOC WATERSHED DISTRICT HANDBOOK APRIL 2020** supersedes the 2008 version.

The Kansas Department of Agriculture, Division of Conservation (DOC) will publish the new version of the Handbook on its website.

The information in this Handbook is offered as a guide and should not be used as a substitute for rules and regulations or statutory authorities.

Watershed Dam Construction Program Overview

K.S.A. 2-1915 provides authorization for appropriation of state funds for cost-sharing assistance in the construction of detention dams and/or grade stabilization structures. The funds are utilized

in organized watershed districts, drainage districts and other special purpose districts that have an approved district general plan for flood control and prevention.

Program objectives are to stabilize streams to prevent degradation of the drainage area because of excessive erosion; provide protection to agricultural land, urban areas, transportation systems, and utilities from water and siltation damages as well as safety for people and/or domestic and wild animals; provide protection from siltation and pollution to water supply storage and streams; and improve upland wildlife habitat on agricultural land.

BACKGROUND

1. Authorized in K.S.A. 2-1915 by the 1976 Legislature.
2. Provides state funds to cost-share on detention and grade stabilization structures in watershed districts, drainage districts and other special purpose districts.
3. Must have general plan approved by the Kansas Department of Agriculture, Division of Water Resources.
4. First funded in FY 1977 and each year since.

The DOC web site has information about the Watershed Dam Construction Program and printable forms relating to dam funding application, dam inspection and maintenance.

[KDA DOC Flood Control and Lakes Programs](#)

<h2>State Association of Kansas Watersheds (SAKW)</h2>

The DOC works closely with the SAKW board of directors, Executive Director and the membership.

SAKW was chartered in 1951 to represent all watershed districts in Kansas. SAKW is a non-profit organization supported by memberships and partnering agencies. The association is governed by a board of directors made up from representatives of watershed districts.

The day to day activities of the organization is managed by an Executive Director and an Executive Secretary. The SAKW website can be found here www.sakw.org

There are 74 separate watershed districts in 43 counties of Kansas. Over 1,500 dams have been constructed through the federal PL 83-566, PL 78-534, the state of Kansas Assistance to Watershed Dam Construction, and Watershed Districts programs. Approximately 1,500 additional structures are planned. When completed nearly 23% of the land area of Kansas will be protected by these structures.

Legal Status

The legal status of Kansas watershed districts is found in Watershed Districts Law **K.S.A. 24-1203 through 24-1210.**

1. Watershed districts are organized as provided in **K.S.A. 24-1203 through 24-1208.**
2. Each incorporated district is a body politic and corporate - **K.S.A. 24-1209.**
3. Each district has powers as authorized in **K.S.A. 24-1209.**
4. All powers granted to a watershed district shall be exercised by a board of directors - **K.S.A. 24-1210.**

Annual Meeting (K.S.A. 24-1211)

1. The first annual meeting shall be held not less than 12 months or more than 13 months after the recording of the certificate of incorporation and annually thereafter.
2. Purpose of annual meeting:
 - Election of directors whose terms expire.
 - Report on the financial condition and activities of the district.
 - Review five-year construction plan including estimated construction date of all proposed projects and determine if project is cost effective and in current public interest.
3. Notice of the annual meeting shall be given at least 10 days prior to the date of the meeting.
4. Notice of annual meeting shall be by one publication in a newspaper of general circulation in each of the counties the district is a part. An example Annual Meeting Notice can be found at the end of this chapter on page 1-19.
5. The number of directors and or the date of the annual meeting may be changed at an annual meeting, provided the notice of the proposed change is given at the annual meeting immediately preceding the annual meeting at which the proposed change would go into effect.
6. Copies of the following shall be furnished to the Division of Conservation (DOC):
 - Minutes of the annual meeting
 - Report of the district's financial condition
 - Report of the district's activities

The above information should be included with the minutes of the next regular board of directors meeting.

7. Qualified voters in attendance at the annual meeting shall be entitled to vote at the meeting.
8. The following is a suggested annual meeting agenda:

Business Session

- Call to order and welcome
- Recognition of guests
- Explanation of meeting requirements and purpose
- Approval of last year's Annual Meeting Minutes
- Financial report (explain fund sources and summarize usage)
- Annual report (point out highlights if printed)
- Review of five-year plan
- Director election (results may be announced later in the program)
- Adjournment (of business session)

Regular / Special Meetings (K.S.A. 24-1212)
--

1. The Board of Directors shall hold regular meetings no less than once each quarter.
 - Meeting date and place is selected by the board.
 - Notice of meeting mailed to each director at least five days before the meeting date.
 - Special meeting may be held at any time:
 - by waiver of notice of such meeting by all directors, or
 - by call of the president or any two directors, provided that a notice in writing is signed by the persons calling any special meeting which shall be mailed to each director at least two days prior to the time fixed for the special meeting.
 - A majority of the directors shall constitute a quorum for the transaction of business.
 - In the absence of elected officers (President, Vice-President, Secretary or Treasurer), a quorum at any meeting may select a director to perform the responsibilities during the meeting.
 - Each meeting, whether regular or special, shall be open to the public and subject to the Kansas Open Meetings Act (KOMA).
 - Copies of the minutes of the regular and special meetings shall be furnished to the DOC. The district financial report and listing of bills payable are part of the minutes and are to be sent to the DOC with the minutes.

Number of Directors (K.S.A. 24-1210)

A district director has a unique niche among agencies managing Kansas' natural resources. Directors serve as grassroots representatives of landowners and the general public in their community, providing leadership and direction to flood mitigation and other natural resource related initiatives.

1. The watershed district board of directors is composed of not less than three and not more than fifteen qualified voters.

2. District boards of directors in existence before July 1, 1987 and consisting of more than 15 members have the option to maintain the same number of members or reduce the number.
3. The number of directors may be changed at an annual meeting, provided the notice of the proposition to change is given at the annual meeting immediately preceding the annual meeting at which the proposed change is to be in effect. (K.S.A. 24-1211).

Qualifications for Election (K.S.A. 24-1202)

Qualifications of voters attending the annual meeting may be requested, but if appropriate the notice of the annual meeting should so state that those wanting to vote must be a qualified voter, which is defined as:

- Any person eighteen years or older, who owns land within the district, whether or not a resident of the district.
- A landowner is defined by K.S.A. 24-1202 (k) as the record owner of the fee in any real estate in the district or the fee in the surface rights of any real estate in the district, but the owners of an oil and gas lease, mineral rights or interest, easements or mortgages as such shall not be considered landowners, and school districts, cemetery associations and municipal corporations shall not be considered landowners:
 - If he/she is otherwise eligible to vote, then as a resident of the watershed district, may vote without owning land.

Election of Directors (K.S.A. 24-1211)

1. Election of directors whose term expires shall be held at the annual meeting.
2. Election shall be by ballot.
3. Qualified voters in attendance at annual meeting shall be entitled to vote.

Oath of Office (K. S. A. 54-106 and 75-4308)

1. All officials elected or appointed under any law of the State of Kansas, before entering upon the duties of their respective office, shall sign an oath of office.
2. Each district shall file the original of the oath of office with the district records. An example Oath of Office can be found at the end of this chapter on Page 1-19.
3. The signature of the director must be notarized.

Term of Office (K.S.A. 24-1210)

1. Directors are elected for a term of three years.
2. A director shall hold office until a successor is duly elected or appointed and qualified (who fulfills the requirements of a qualified voter and completes the Oath of Office.)

Vacancies on Board of Directors (K.S.A. 24-1211)

The remaining directors shall fill any vacancy occurring on the board prior to the expiration of the term of any director by appointing a substitute director to serve the unexpired term. The appointed director must meet the same qualifications as elected directors.

Director's Expenses (K.S.A. 24-1210)

1. Directors shall serve without compensation.
2. Directors shall be allowed actual and necessary expenses incurred in the performance of their official duties.

Mileage Allowance

Districts shall authorize, by board action, the mileage rate to be paid to employees and directors. However, mileage reimbursement exceeding the Internal Revenue Service allowable deduction rate shall be considered as income. An IRS Form 1099 is required to be submitted for each person receiving mileage reimbursement above the allowable rate.

Obtaining New Board Members

While directors can be re-elected, potential new board members should be cultivated constantly. Try to keep board membership representative of all types of landowners or operators, community groups, and conservation and environmental interests in the district. The more representative the board is, the broader the base of support for district activities. Ensure you are addressing urban oriented concerns and issues. Also look at skills that are needed on the board, including interpersonal skills. For example, if your district's educational programs are not as strong as you would like, you might recruit someone with a strong educational background.

1. **Identifying Desirable Skills:** District board members should be selected based on their skills and qualities, not on "who's available that we know". Beyond knowledge in natural resources, good board members should have management skills and leadership abilities. A board member must be able to devote adequate time to the district. In addition, board members should be progressive, innovative, and open-minded.
2. **Analyzing District Needs:** Before a district begins to search for a new board member, it should inventory its major programs and activities, strengths, weaknesses and goals. Possibly invite local organizations to recommend a candidate based on these needs. Districts should actively

seek ideas and prospects from groups outside their normal sphere of influence. Here are some suggestions:

- Banks and charities
- Environmental organizations
- Advertising and marketing firms
- Teachers and college professors

Organization of the Watershed District Board

Directors administer the district by delegating tasks through a structure of board officers, committees, and the district employees. However, the ultimate responsibility for proper completion rests with the board officer and the board as a whole. The first board meeting after the annual meeting elections, the district board of directors should reorganize and elect officers and make appointments to committees. Board positions should be rotated annually to provide all members with leadership experience. The following are the elected officer positions that may comprise a watershed district board and a description of their duties:

1. **President:** The President of a watershed district board is elected by other board members to lead and accept responsibilities on behalf of the district board. As the head of the board, the President sets the meeting agenda, (with input from district employees and other directors), presides at meetings, appoints committees, assigns responsibilities and ensures new directors are properly oriented. It is important for a President to recognize his or her responsibility to balance between task - getting the work of the group done; and relationship - helping people enjoy working in the group. An effective President will guide the group through a meeting by adhering to the agenda, following meeting procedures and making an effort to begin and end meetings on time. The President normally doesn't vote unless it is to break a tie. Nor does the President make or second a motion. He/She may "entertain a motion" but someone else must state and/or second it.
2. **Vice-President:** In absence of the President, the Vice-President assumes all duties and responsibilities of the President in conducting the meeting. He/She also may arrange special programs for regular board meetings and serve as President of at least one standing committee.
3. **Secretary:** The Secretary notifies members of each meeting, provides the President with a list of business items to place on the agenda, keeps the board meeting minutes, records of committees, and correspondence on behalf of the board, and prepares district reports. The Secretary also ensures that all forms of communication (memos, financial statements, files, etc.) are properly documented.
4. **Treasurer:** The Treasurer oversees the watershed district finances. He/She keeps complete financial records, approves claim vouchers, presents treasurers reports, and oversees development of the district budget. Some of these duties may be assigned to district staff.

Note: Some districts combine the offices of the Secretary and Treasurer into one position. Some do not recognize the position of Secretary for elected members. An employee may be assigned these duties.

Guidelines for Increasing Participation and Effectiveness of a Board

1. Remind members of meeting times and dates.
2. Develop an agenda prior to the meeting with the President's and Manager/Contracting Officer's input.
3. Ask for input from every member in developing the agenda.
4. Remind members of their responsibility to the watershed district populace that elected them.
5. Pay for refreshments or meals from district funds if meetings are scheduled during meal times.
6. Remove negative stigma of any resignations from the board so members who develop unexpected time commitments may resign gracefully for the good of the district.
7. Encourage involvement of directors in activities that will provide recognition of their efforts.
8. Recognize outstanding effort, accomplishment and service with awards or certificates.
9. Encourage membership / participation in State Association of Kansas Watersheds (SAKW) and conventions and seminars.
10. Stress the importance of a qualified nominating committee to enable the district to elect proactive and committed members.
11. Rotate board officer positions annually.
12. Promote ownership.
13. Encourage a team approach.
14. Assign directors to their area of interest.
15. Develop tasks with clear goals and objectives.
16. Review district directors' responsibilities.
17. Build directors' skills.
18. Recruit associate directors / advisors to assist the board in projects and to nominate them for future board director positions.
19. Involve state, federal and private organizations to develop / implement district programs.
20. Fully understand board members' external time commitments prior to assigning a task.

21. Assign a task to which a director can succeed.
22. Provide encouragement and follow-up.
23. Provide required information and resources.
24. Explain consequences of inaction.
25. Encourage members to participate in activities outside of the district board.
26. Use a committee and/or team approach to solve problems and accomplish projects.
27. Ask individually before making a request in a public meeting.
28. Share workloads.
29. A board President must maintain control at meetings.
30. Have an agenda and stick to it.
31. Keep directors updated frequently.
32. Call on members who have needed expertise.
33. Support directors' decisions.
34. Follow up on tasks.
35. Ask straightforward questions.
36. Ask each member his or her opinion at meetings to reduce "follower" behavior.
37. Set deadlines and adhere to them.
38. Never belittle or speak negatively or casually of a director or district board in public.
39. Find ways to stimulate healthy and innovative board discussions.
40. Ask DOC and state associations for assistance to help increase participation / effectiveness.

Contracting Officer / Manager

A Contracting Officer / Manager shall be appointed or employed by the district to arrange and administer projects which are cost-shared by the units of government. The Contracting Officer / Manager shall be someone other than a state or federal employee.

A Contracting Officer / Manager appointed by a watershed district board who is also a member of the Watershed District Board shall serve without compensation according to (K.S.A. 24-1210). Contracting Officers who are not also serving as board members may receive compensation as agreed upon between the board of directors and the Contracting Officer.

The current policy of DOC is that the local sponsor of the project will do the contracting for each approved site.

The Contracting Officer / Manager is responsible for the development, execution and administration of contracts, including their legal, technical and administrative sufficiency. In carrying out this responsibility, the Contracting Officer must comply with Kansas statutes and DOC guidelines and procedures, the state contract and district policy.

Duties of a Contracting Officer / Manager are too varied to be listed in detail. However, the following are some of the more important duties and responsibilities in overseeing a specific project:

1. Work with the district board in development of the project by:
 - keeping the board informed of the progress of all phases of the project.
 - working with landowners to secure all necessary land rights.
 - working with landowners to resolve problems or concerns.
 - coordinating the board, landowner and engineers' concerns.
 - reviewing the engineering plan with the district board and securing board approval.
2. Performing other duties as assigned by the district board.

Planning

Planning is a basic tool to assist in formulating a detailed outline (method) to accomplish a task, project, or program. Do not be intimidated by fancy planning terminology and techniques. Planning is basically an organized way of getting things done. The process of developing and carrying out a plan increases the effectiveness of the watershed district in meeting its responsibilities. Districts should choose the planning technique that is appropriate and best meets their needs. No matter what technique is going to be used, and before the actual planning process begins, the following questions should be answered by the watershed district board.

- What is our expected outcome of the plan?
- What components of the planning process should we include?
- What do we need to begin the planning process?
- Who should be involved in the planning process and at what stage?
- When should the planning process begin?

The importance of planning can be summed up by the adage "failing to plan is planning to fail."

1. **Strategic Planning:** Strategic planning may be defined as a disciplined effort to produce fundamental decisions and actions that shape and guide what an organization is, what it does, and why it does it. Strategic thought and action are increasingly important to the continued viability and effectiveness of a watershed district. Strategic planning also assists watershed districts in identifying high priority items to ensure the wise and intelligent use of limited time and resources. Strategic planning is a continuous and recurring process and should be integrated with other management systems and plans. It requires commitment because it is time consuming and may not be easy to perform. Keep in mind that sometimes groups have to repeat steps before satisfactory decisions can be reached and actions taken. The benefits reaped from strategic planning are well worth the time spent. Eventually strategic planning will become a part of organizational life, rather than a product.
2. **Planning Sessions:** The strategic planning process calls for an input of ideas from a wide spectrum of interested parties inside and outside of the watershed district. Take the time to get people who are qualified and interested in serving on a planning steering committee. Input from others at various times throughout the process will also prove to be very beneficial. Ideally the planning process should include input from all directors, district staff, local, state and federal agency representatives, land users, business leaders, county commissioners, legislators and/or their staff, school teachers and/or administrators, and others interested in strengthening watershed efforts in your county. This will be very time consuming but allows for people with diverse experiences and backgrounds to generate ideas and suggestions that may not have been otherwise considered. Also, community input may be obtained through casual contact, public meetings, mail and telephone surveys, local newspapers, and newsletters. All these input efforts will foster participation, communication, and commitment that will enhance public support.
3. **Elements of a Strategic Plan:** There are many strategic planning models to choose from. The following are common elements of a strategic plan presented in an easy-to-follow manner.
 - **MISSION STATEMENT:** A clear, concise description of the reason the watershed district, usually consisting of one to two sentences. A mission statement identifies what the organization is and its authority, purpose, and primary service.
 - **DISTRICT PHILOSOPHY:** The expression of core values and principles used by the watershed district to carry out its mission.
 - **VISION STATEMENT:** A clear, forceful and inspiring statement of what the watershed district wants to be in five to ten years. A vision statement is a present tense statement of an attainable, desired state of the future representing what the watershed district would like to achieve or become.
 - **INTERNAL / EXTERNAL ASSESSMENT:** An evaluation of key factors affecting the success of the watershed district in achieving its mission. This includes identifying the Strengths, Weaknesses, Opportunities, and Threats (SWOT analysis). This step is very important because every effective strategy will build on strengths and take advantage of opportunities, while it overcomes or minimizes weaknesses and threats. Internal analysis involves the watershed district's view of itself in terms of strengths and weaknesses

(limitations). The information is derived from those within the watershed district. Districts should assess their resources, present strategy (process), and performance (outputs). External assessment encourages the district to look beyond its walls in order to identify the opportunities and threats the watershed district faces. Factors (present and future) that may influence the success of your programs such as political, social, economic, cultural, or events should be analyzed. By completing an internal / external assessment, a watershed district can better utilize resources and better anticipate barriers to progress.

- **GOALS:** Goals are broad, issue-oriented statements reflecting a watershed district's priorities. They state what the watershed district wants to achieve. Goals should always relate to the mission statement and are based on the vision and the internal / external assessment. Goals are qualitative and quantifiable but are not in themselves quantified in the strategic planning process. In addition, goals are not time-specific because they are expected to be met in a time frame longer than that covered by the plan. Some commonly used goal categories are service or program, resource development, and administrative. Before setting goals, it might be helpful if the issues affecting your watershed district are brainstormed and prioritized. Do not spend time on issues out of your control. In summary, goals should be attainable, measurable, and placed in priority of order (goal example: "To conserve and improve soil, water, and other related natural resources in Happy County.")
- **OBJECTIVES:** One or more measurable, target statements of how the watershed district is going to achieve a goal. Objectives (sub-goals) are detailed, quantified and time-specific (within a plan time frame). They are presented in a priority order (objective example: "Increase awareness and understanding of Best Management Practices.")
- **STRATEGIES:** One or more action-oriented, specific measurable statements of how the objective will be accomplished (strategy example: "Sponsor one watershed tour of land treatment practices per year.")
- **ACTION PLANS:** Action plans provide a detailed description of how a strategy will be implemented. They outline specific activities or tasks, responsibility assignments, and time frames that will be followed. The action plan becomes the specific who, when and what of the strategic planning process. Sometimes the cost and where the money will come from is included.
- **EVALUATION:** Evaluating how well the watershed district is doing the things it set out to do and the probable reasons for their success or failure will assist in improving future performance. Evaluation is a constructive effort to develop information and knowledge that can guide action to bring about improvement. A decision needs to be made on what to evaluate and when. Periodic reviews or progress reports completed throughout the year have proved to be very beneficial to ensure that action plans are being carried out, to make sure everyone is focused, and to make plan revisions if new developments arise.

District Records and Files

Records are a resource critical to the operation of the watershed district. The files must be accurate and provide a complete record of all district activities. Good records also help provide an historical

record of the district. Proper management of these records is the responsibility of each watershed district. A staff member or board officer, generally the district's secretary or Secretary, should be assigned the duties of records manager.

Records management is the use of efficient, cost effective techniques in the creation, storage, retrieval, and disposition of various records. This involves inventorying records, preparing retention and disposition schedules, managing files and forms, protecting vital records, and granting adequate public access to the information in records. The Kansas Open Records Act requires most government records to be open to public inspection. Certain records, however, may be closed according to specific federal or state statutes and regulations. Any record with public access restrictions should be indicated by marking the file or document. Also provide citations for specific state or federal statutes and regulations that limit public access to these records.

Note: Refer to the Kansas Open Records Act (KORA) for more information on public access.

The district's files should be maintained in the manner that best suits the records manager's needs, taking into consideration, however, that anyone who comes into the district office should be able to find files by subject. The files should be indexed and include cross-referenced titles and subjects.

1. **Storage of Records:** File cabinets and bookshelves are commonly used to store records. When these types of storage become full, the use of uniform cardboard boxes designed for holding one cubic foot of records in each container is recommended. Such boxes are the right size for letter size or legal size file folders, depending on how they are filled. Larger containers are too heavy for convenient handling. An inventory system using location codes should be devised so that the contents of each box will be known and so that it can be found efficiently. Taking the time to provide adequate labels for storage boxes also is important. File folders and boxes ideally should be made of acid-free materials when used in storing records with permanent value. These records should be stored in areas that are not subject to extreme temperature changes, flooding or water leaks, and that provide security from loss and defacement.
2. **Record Disposition:** A records retention and disposition schedule is an essential tool in establishing a sound records management program. A records retention and disposition schedule is a timetable that identifies the minimum length of time a record must be retained before it is destroyed. Records should be kept for as long as they are needed and not for as long as they are wanted. The objectives of a records retention and disposition schedule are:
 - to destroy records that no longer have administrative, fiscal, legal, or historical value.
 - to minimize requirements for filing equipment and space.
 - to ensure compliance with the KORA.
 - to assure the identification and protection of vital records.

Records should be surveyed annually and disposed of if appropriate. Discretion should be used for material not listed. The board of directors should order the destruction of any records to be discarded and such motion should be recorded in the minutes listing the records.

Kansas Legislature and the Legislative Process

Watershed district directors are in a position to influence Kansas legislators on natural resource related issues. The grassroots implementation of watershed programs by watershed districts provides legislators with a source of knowledgeable constituents on flood mitigation and other watershed related issues. District directors should be active in addressing watershed issues with his/her state legislators. The State Association of Kansas Watersheds (SAKW) is the organization representing Kansas watershed districts at the state level.

1. **How the Kansas Legislature Works:** The Kansas Legislature meets every year. While the Kansas Legislature is a "citizen" legislature in that it does not meet full time, interim study committees hold extensive hearings between legislative sessions on a variety of subjects. The Kansas Legislature, like all state legislatures (with the exception of Nebraska), is bicameral - it consists of two houses called the Senate and the House of Representatives.

2. **Legislative Organization:**

- **Sessions:** The Kansas Legislature meets annually in Topeka beginning the second Monday in January. The bulk of the session is generally completed by the first part of April. The legislators go home briefly, and then return in 10 to 20 days for what is called the "veto session." This is a period of two to four days when the any bills the governor may have vetoed are considered, as well as other remaining business to be conducted. Legislators then return in approximately 10 days for "sine die" adjournment (without a future date set for resumption). At this point, which is normally about a third of the way through May, the legislative session is finally over for the year.
- **Members:** There are 125 members in the Kansas House of Representatives and 40 members in the Senate. Members of the House are elected for two-year terms and members of the Senate for four-year terms.
- **Leadership:** The leader and presiding officer in the House of Representatives is the Speaker and in the Senate the President. Both are traditionally elected the first day of the session.
- **Committees:** Legislative bodies do most of their work through their committees. There are 18 standing committees in the Senate and 21 in the House. Committees have a life and death hold on bills assigned to them. And presidents of the more important committees are normally powerful members of the legislative leadership.
- **Staff:** Staff support in the legislature is a factor in legislative organization that is often overlooked. The legislative and their administrative support staff tend to be the eyes and ears of the leadership.

3. **Legislative Process:** The process by which a bill becomes law has many points of access. For a bill to become law, its advocates must succeed at every step along the way. But to kill a bill you need to succeed at only one point. This is important as passing or killing a bill will make a difference in the strategy employed.

- **Introduction of Bills:** Any standing committee or member of the legislature has the power to introduce a bill. Also, interim committees may introduce bills when authorized to do so by the Legislative Coordinating Council (a sort of legislative steering committee composed of members of the leadership). Bills can be introduced each session until the cutoff time provided in the legislature's rules. In addition, bills can be pre-filed prior to the convening of the legislature.
- **Referral to Committee:** After introduction, a bill is referred to one of the standing committees for consideration. In Kansas, all bills introduced are referred to a committee by the Speaker in the House and by the President in the Senate.
- **Committee Consideration:** Normally, the most important step in the process is committee consideration of a bill. Every bill referred to a committee is considered or "heard" in some fashion by the full committee. Most major bills usually have a hearing where testimony is taken. The role and power of the committee president usually determines a bill's fate at this juncture.
- **Floor Debate and Amendment:** Following committee action, unless a bill is adversely reported or placed on the Consent Calendar, the bill goes to the Committee of the Whole under which the heading of General Orders, at which time it is explained and debated. (Bills placed on the Consent Calendar remain there two days and then, if there is no objection, go directly to final vote. This calendar is used for noncontroversial bills.) The Committee of the Whole consists of the entire membership of the House or Senate. It is simply a parliamentary device that each house uses when explaining, debating and amending bills. During this time more informal rules govern the conduct of members.
- **Final Vote:** Following consideration on General Orders, a bill is put to a final vote. A majority of the full House or Senate is required to pass a measure. In the House of Representatives, that means 63 votes are needed, and 21 votes are needed in the Senate. If defeated in one house, a bill is usually dead for the session.
- **Consideration by Second House:** If a bill passes the first house, it goes to the second house where it must go through the same process all over again. If the bill survives the second house without an amendment, it goes to the Governor. If the second house amends the bill, the first house may go along with the change, in which case the bill then goes to the Governor. If the two chambers disagree, a conference committee is formed to resolve the differences between them.
- **The Governor:** One way or another, a bill surviving the legislative gamut goes to the Governor for consideration. Essentially, a governor has three options under Kansas law - 1) he/she may sign the bill; 2) he/she may permit it to become law without his/her signature (a governor has ten days to sign or veto a bill. If he/she does neither, it becomes law as if it had been signed.); or 3) he/she may veto the bill. If the Governor vetoes a bill, it can still become law if both houses have enough votes to "override" the veto. In Kansas, it takes a two-thirds vote of both houses to override. Consequently, a veto is not often overridden.

Watershed / Drainage District Director Oath of Office

I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Kansas, and faithfully discharge the duties of a _____
[print the watershed / drainage district name] director. So, help me God.

Signature of Director

This oath was signed before me this _____ day of _____, 20__.

Witness: Public Notary

Distribution:

Original – District File
Copy - New Director
Copy - DOC

2. Financial Guidelines

No Fund Warrants (K.S.A. 24-1219).....	2-2
Tax Levy (K.S.A. 24-1219)	2-2
Financing Proposed Projects (K.S.A. 24-1214).....	2-2
Improvement Bonds (K.S.A. 24-1215 and 24-1220).....	2-3
Claim Payments	2-3
Lease Purchase Agreements	2-4
Financial Status Report.....	2-4
Annual Audit.....	2-5
Audit Guidelines	2-6
Accounting Basics	2-7
Internal Control.....	2-8
Basic Principles of Internal Control	2-9
Separation of Duties.....	2-9
Deposit of Public Funds.....	2-10
Investment of Municipal Funds	2-10
Authorized Investments (K.S.A. 12-1675)	2-10
Cash Basis Law (K.S.A. 10-1101 <i>et seq.</i>).....	2-11
FORM - Cash Basis Law.....	2-12
Sales Tax (K.S.A. 79-3601 <i>et seq.</i>).....	2-13
Reporting Payments on IRS Form 1099	2-13
Budgets for Taxing Subdivisions (K. S. A. 79-2925 through 79-2936).....	2-14

No Fund Warrants (K.S.A. 24-1219)

1. The watershed district board may issue no-fund warrants to pay for initial organizational, engineering, legal and administrative expenses of the watershed district.
2. The amount of no-fund warrants issued shall not exceed two mills times the assessed valuation of the taxable tangible property within the district - **K.S.A. 24-1219**.

Tax Levy (K.S.A. 24-1219)

After incorporation of the watershed district by the Secretary of State, the watershed district board has authority to annually levy a tax against all of the taxable, tangible property of the watershed district for the purpose of establishing a general fund for payment of engineering, legal, clerical, land and interests in land, installation maintenance, operation and other administrative expenses. [All limits on the mill levy rate were abolished by the Kansas Legislature in 1999 with enactment of **K.S.A. 79-5040. Suspension of tax levy limitations.**]

1. The mill levy may be increased by the watershed district board adopting a resolution declaring it necessary to increase such annual levy and to what amount.
2. The resolution shall state the total amount of the tax to be levied.
3. Shall be published once each week for two consecutive weeks in a newspaper of general circulation in the district.
4. The increased annual levy, in an amount not to exceed the amount stated in the resolution, may be made for the following budget year and each successive budget year unless a petition has been filed requesting an election on the tax levy.
5. Petition to request an election upon the increase in tax levy must be signed by not less than 5% of the qualified electors in the watershed district. Filed with the county election officer within 60 days following date of last publication of the resolution. In the event a valid petition is filed, no increased levy shall be made without such increased levy having been submitted to and having been approved by a majority of the qualified electors voting at a called election.
6. Elections shall be called and held in the same manner prescribed for the calling and holding elections on the question of issuance of bonds under the general bond law and **K.S.A. 24-1215**.

Financing Proposed Projects (K.S.A. 24-1214)

1. When the initial general plan is approved by the Chief Engineer, Kansas Department of Agriculture, Division of Water Resources (DWR), the watershed district board shall then by resolution propose that the cost to the watershed district of all works contemplated in the plan be paid by either
 - a general levy against all of the taxable, tangible property located within the watershed district and special assessment against lands within the district to be specially benefited by any of the proposed projects; or

- both a general levy and special assessment, stating the portion proposed to be paid by each method.
2. The complete procedures to follow in preparation of the proposal, publication and other processes are found in **K.S.A. 24-1214**.
 3. A watershed district may modify the method of financing if the watershed district board is unable to carry out a general plan because of disapproval of a bond issue or insufficient funds have been provided.
 4. The watershed district board may reconsider the general plan and/or the resolution of financing and, by following the procedure set forth in **K.S.A. 24-1213 and 24-1214**, resubmit a general plan and/or resolution of financing.

Improvement Bonds (K.S.A. 24-1215 and 24-1220)

1. The issuance of improvement bonds of the entire watershed district must be approved by qualified voters at an election called to consider the bond issue (detailed procedures are provided in **K.S.A. 24-1215**).
2. Authorized improvement bonds shall be issued to mature in not more than 30 annual installments of approximately equal amounts each year - **K.S.A. 24-1220**.
3. Bonds shall bear interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, payable semi-annually or at such time as may be fixed by the terms of the resolution authorizing the issuance - **K.S.A. 24-1220**.
4. Bonded indebtedness of the watershed district shall not exceed ten percent of the assessed valuation of all the taxable tangible property within the district - **K.S.A. 24-1220**.

Claim Payments

1. The watershed district board shall be presented with a written claim (voucher) with a full accounting of the items listed prior to issuing or authorizing a warrant check out of any fund. A full accounting shall include an invoice or other documentation with complete purchase information. A watershed district director's and district employee's claims shall include itemized accounting of travel, lodging, meals and other expenses - **K.S.A. 10-802, 12-105b**.
2. Claims which provide for a discount for early payment or for the assessment of a penalty for late payment may be authorized to be paid in advance of approval by the governing body provided the governing designates and authorizes one of the officers or employees to pay such claim in advance of presentation to and approval by the governing body if payment is required before the next regularly scheduled meeting. There are three exceptions as noted below per **K.S.A. 12-105b**.
3. Governing body designates and authorizes one of the officers or employees to pay such claim in advance of presentation to and approval by the governing body if payment is required before the next regularly scheduled meeting. There are three exceptions as noted below per **K.S.A. 12-105b**.

report of financial condition and activities of the district shall be furnished to the DOC - **K.S.A. 24-1211.**

3. The treasurer of every municipality (watershed district) shall keep a record of the amount of money on hand in the treasury, which record shall show the amount of money at all times in each particular fund - **K.S.A. 10-1118.**

Annual Audit

1. Annual audits are required for all watershed districts with aggregate annual gross receipts in excess of \$275,000 or which have general obligation bonds outstanding in excess of \$275,000. Audits must be performed by a licensed municipal public accountant or certified public accountant - **K.S.A. 75-1122.**
2. Watershed districts that do not meet the criteria of paragraph a. above may employ a licensed municipal public accountant or certified public accountant to examine and audit the accounts (there is a provision for a written petition by voters to request an audit.) - **K.S.A. 75-1125.**
3. K.S.A. 12-150 authorizes watershed districts to enter into an agreement with the board of county commissioners of any county in which all or part of the district is located to have the books, records and other financial statements audited at the same time as the annual county audit.
4. A copy of each audit report with recommendations, if any, rendered by any licensed municipal public accountant or certified public accountant upon the completion of any audits shall be filed with the State of Kansas, Office of Chief Financial Officer, Statewide Agency Audits & Municipal Services within one year after the end of the audit period of the audit unless an extension of time is granted by the Chief Financial Officer.
5. The following compliance checklist may be helpful in preparing for audits:
 - Adequacy of internal control Statement on Auditing Standards, funds (AU Section 320.)
 - Income from investments properly accounted for and credited to funds - **K.S.A. 12-1677.**
 - Investments made in accordance with statutory provisions - **K.S.A. 12-1675 and K.S.A. 17-5002.**
 - Fixed asset accounting policies and procedures properly established - **K.S.A. 75-1120a.**
 - Depositories officially designated for all public monies - **K.S.A. 9-1401.**
 - Bank deposits adequately secured - **K.S.A. 9-1402.**
 - Claims itemized, internally audited and approved - **K.S.A. 12-105b.**
 - Expenditures made in compliance with the cash basis law - **K.S.A. 10-113.**
 - Disclosure of violations of statutory provisions in the notes to financial statements - **K.S.A. 75-1126.**
 - The minutes contain an adequate record of the proceedings of the governing body and signed.

- Watershed District funds disbursed as provided by law - **K.S.A. 12-105a, K.S.A. 12-105b and K.S.A. 10-80.**
- Treasurer maintained records which conform to the statutes - **K.S.A. 10-1118.**
- Joint custody receipts pledged to secure deposits properly filed - **K.S.A. 9-1405.**
- Surety bonds furnished for all employees and officers entrusted with funds or property as determined by the Watershed Board of Directors.

Audit Guidelines

The selection of an auditor is ultimately the responsibility of a government's legislative body. The following are answers to common questions about audits reprinted from a booklet entitled *An Elected Official's Guide to Auditing* by Stephen J. Gauthier of the Government Finance Officers Association, 180 N. Michigan Avenue, Suite 800, Chicago, Illinois 60601.

Q: What is a financial statement audit?

A: The goal of the annual financial statement audit is to assure users of a government's financial statements that those statements are fairly presented.

Note: This information is true if a GAAS audit is done. The goal of the Agreed-Upon Procedures Audit is to report findings based on specific procedures performed.

Q: How does the auditor's responsibility for the financial statements differ from that of management?

A: The financial statements from first to last, represent management's assertions concerning the government's financial position, results of operations and cash flows. The auditor's role is strictly limited to providing users of the financial statements with an independent basis for relying upon management's assertions. Even when the auditor takes a key role in preparing the financial statements, those statements remain the assertions of management.

Q: How do auditors obtain the information they need?

A: Auditors use a variety of methods to obtain the evidence they need to determine whether a government's financial statements are fairly presented. Auditors inspect relevant documentation, observe employee performance, inquire concerning policies, procedures, transactions and events, confirm balances and transactions with outside parties, and perform analytical procedures to determine the reasonableness of transactions and balances.

Q: What degree of assurance do auditors seek to provide?

A: The goal of the auditor is to obtain reasonable, not absolute, assurance that the financial statements are fairly presented.

Q: What are internal controls?

A: Management is responsible for protecting the government's assets and for ensuring the integrity and comprehensiveness of the data collected by the accounting system for use in internal and external financial reports.

Q: What is a reportable condition?

A: Auditors typically perform extensive tests of controls as part of their effort to obtain the evidence needed to support an opinion on the fair presentation of the financial statements. While performing these tests, auditors may become aware of significant deficiencies in

internal controls. Generally, accepted auditing standards (GAAS) refer to such deficiencies as reportable conditions and require that auditors ensure that management is aware of them.

Q: What is a material weakness?

A: Some reportable conditions are more serious than others. Specifically, some reportable conditions are of such magnitude that they could potentially result in a material misstatement of the financial statements. These reportable conditions are known as material weaknesses.

Q: What is a management representation letter?

A: Accordingly, auditors are required by generally accepted auditing standards (GAAS) to obtain direct written acknowledgement from management of this responsibility. (The management representation letter should not be confused with the management letter.)

Accounting Basics

Accounting procedures are all processes used to record, classify, and summarize financial information to produce financial reports and to provide internal control. Proper handling and accounting for cash is very important. Cash includes currency, coins, checks, postal and express money orders, bank drafts, and investments. Each watershed district needs to adopt an accounting system to meet their needs as well as satisfy statutory financial record keeping responsibilities. At a minimum there must be a method used to record information related to accounts payable, disbursements, receipts, and accounts receivable. There is a variety of accounting systems the district may choose from. Many districts are converting manual accounting systems to computerized accounting systems because computerized systems are faster and more accurate.

The following is an overview of the necessary accounting records. To record the accounts payable (amounts owed by the watershed district for goods or services received) an accounts payable ledger can be used. According to the provisions of K.S.A. 10-1117, "the clerk or secretary of every municipality shall keep a record of all indebtedness and contracts creating a liability against the municipality. In such records there shall be known the date of the making of the contract or the creation of the debt, the amount of the contract or debt, the time payable, and the particular fund from which payment is made."

Note: For the procedure on payment of claims see the previously presented information on claim vouchers.

Disbursements (payments made for goods purchased or services received by the watershed district) must be recorded. A record of all checks to be issued and issued must be kept showing the check number, date, and amount, what fund drawn, and name of the payee - **K.S.A. 10-804 & 10-805**. For this purpose, a journal and/or ledger may be used. A journal is a book of original or first entry. The two-column journal format provides for entering transactions in dated order. A general ledger is used for recording the final entry as a group of accounts or categories, e.g., all of the watershed directors' expenses would be grouped together and totaled. A ledger may be a bound book, a loose-leaf type book, or a computer printout. All moneys received, regardless of their source (including interest earned) must be recorded. A receipts journal or a receipt book may be used for this purpose. Pre-numbered (by the printer) receipt forms should be used. A checkbook is the most basic financial record keeping tool. Many different styles and sizes are available. A business style with check stubs is recommended. This type provides a place for recording the check information as well as recording deposits and the balance.

A checkbook listing the watershed district's current balance assists in complying with **K.S.A. 10-1118**, which states "the treasurer (or district employee) of every municipality shall keep a record of the amount of money on hand in the treasury, which record shall show at all times the amount of money in each particular fund." An accounts receivable ledger can be used for recording each customer's balance owed to the district for goods purchased or services received. At the close of every month the checkbook balance should be reconciled with the bank statement.

The watershed district's balance for the bank account may reflect transactions not yet recorded on the bank records (i.e., outstanding checks and deposits in transit), and the bank may have recorded some transactions not yet recorded by the district (i.e., service charges and interest). These items must be reconciled to account for the difference between the district's balance and the bank's balance. Space is provided on the back of most bank statements for the reconciliation. The district's financial records should also be checked making sure that each item is recorded in the same amount by the bank. The accuracy of the accounting systems should be verified every month. The cash-in-bank balances taken from the general ledger should be reconciled with the checkbook. The receipt forms total should equal the bank statement deposit total. As soon as the savings account and/or investment bank statement is received the district records should also be reconciled.

Internal Control

Internal control is a plan of organization under which employees' duties are so arranged and records and procedures so designed as to make it possible to exercise effective accounting control over assets, liabilities, revenues, and expenditures. Objectives of a good system of control include:

- Safeguard assets (money, data, equipment, etc. anything of value).
- Prevent errors.
- Check accuracy and reliability of information in journals, ledgers, dockets, and other records.
- Encourage adherence to policies and procedures.
- Encourage adherence to laws and regulations.
- Promote efficiency and effectiveness.

If your office has good internal control, the chance of an error and fraud is minimal. Detected errors and fraud will probably be caught very early, before they have a chance to become major. Auditors are required by professional standards to study and evaluate internal control, communicate material weaknesses in internal control, and report on internal controls. Auditors must, however, use sampling procedures and these procedures often do not detect fraud. The U.S. General Accounting Office (GAO) performed an extensive study of 77,000 federal cases of fraud and found that only two percent were exposed as the result of an audit effort. The largest percentage of cases of fraud -- 34 percent -- were detected accidentally by other employees.

Basic Principles of Internal Control

There are four very basic and straightforward ideas to achieve good internal control, ie.

- divided duties
- qualified personnel

- sound procedures
- sound performance.

Definitions

1. Divided Duties - simply means that no one person handles related transactions or events from beginning to end.
2. Qualified Personnel - means that people doing the work should have the ability to do the work.
3. Sound Procedures - means that procedures for authorizing, recording, and reporting transactions should be clearly and thoroughly
 - defined
 - documented
 - disseminated
 - completed.
4. Sound Performance - means making sure that the procedures are in fact being followed.

Separation of Duties

Nothing is more important in a system of internal controls than separation of duties. This is more difficult for watershed districts because of the small number of persons in the office. This condition does not mean that you forget about separation of duties. In order for separation of duties to work in most districts, substantial involvement would be necessary by watershed district board members. Realizing that most board members are farmers or otherwise employed, separation of duties would require a real commitment. Following are sample schemes for separation of duties where outside parties (board members and banks) are used.

1. Cash Management Duties

- Board member should be notified by the bank for unusual items, such as insufficient funds.
- Review bank accounts for proper collectivization.
- Receive unopened bank statements.
- Perform bank reconciliation every month and check for the following:
 - Deposits.
 - Compare dates and amount of daily deposits as shown on the bank statement with the cash receipts journal.
 - Investigate bank transfers to determine that both sides of the transaction have been recorded on the books.

2. Disbursements

- Account for sequence for check numbers including all voided checks.
- Examine cancelled checks for authorized signatures.
- Examine cancelled checks for irregular endorsement
- Examine cancelled checks for alterations.

Deposit of Public Funds

1. All watershed district funds, regardless of use or source of funds are considered to be public moneys - **K.S.A. 9-701m**.
2. Funds can be deposited in any bank or savings and loan association with a main office or branch in county or counties in which all or part of the watershed district is located - **K.S.A. 9-1401**.
3. The watershed district board of directors shall designate, by official action recorded upon its minutes, the banks, trust companies, state and federally chartered savings and loan associations and savings banks, which shall serve as depositories of its funds. It is recommended watershed districts make this designation annually.
4. State law requires that “any public moneys or funds” deposited by a watershed district shall be adequately secured with the financial institution which was designated as the district’s official depository. However, if the official depository federally insured its deposits up to a maximum amount (i.e. insured by FDIC or FSLIC up to \$100,000 per depositor), districts are only required to obtain adequate security for the “public moneys or funds” deposited in excess of the maximum amount set forth. These securities shall be pledged by the official depository at the district’s request – **K.S.A. 9-1402**.

Investment of Municipal Funds

1. Management of cash resources through investments is one way for watershed districts to increase revenue.
2. Watershed districts may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.
3. Federal regulation of banks and savings and loan associations govern the types of investments these institutions may offer, minimum amounts required, maturities, interest rate ceilings, etc.

Authorized Investments (K.S.A. 12-1675)

1. Time deposit open accounts (TDOA’s) or certificate of deposit (CD’s), with maturities of not more than two years, with banks or savings and loan associations.
2. **Repurchase agreements:** the investment must be made in a bank or savings and loan located in the watershed district so long as the interest rate is not more than 2% below the 91-day U.S. Treasury bill rate. Transactions must be direct obligations of, or insured by, the U.S. Government or its agencies. A receipt should be obtained that identifies the specific obligation.

3. **U.S. Treasury bills or notes:** investments in treasury bills are authorized when banks and savings and loans located in the district will not agree to pay at least the current 91-day treasury bill rate or the maximum allowed by law, whichever is lower, on types of investments listed in the Cash Basis Law section paragraph-a.
4. Passbook savings accounts.
5. Transfer accounts this account combines a demand account with a savings account.

Cash Basis Law (K.S.A. 10-1101 <i>et seq.</i>)

1. “Unless otherwise provided in this act, it shall be unlawful, for the governing body of any municipality to create any indebtedness in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose.” - **K.S.A. 10-1112.**
2. Legislative action in 1980 provided exceptions to the above statutes that may affect some transactions by watershed districts. **K.S.A. 10-1116b** states in part, “Nothing in the provisions of **K.S.A. 10-1101 et seq.** shall prohibit a municipality from entering into a lease agreement, with or without an option to buy, or an installment-purchase agreement, if any such agreements specifically state that the municipality is obligated only to pay periodic payments or monthly installments within current budget year.
3. Watershed districts contemplating indebtedness as provided under **K.S.A. 10-1116b** are encouraged to contact the DOC for further guidance.
4. Penalties for violations - **K.S.A. 10-1121:** “Any member of any governing body of any municipality, who shall knowingly violate any of the provisions of this act”, and **K.S.A. 10-1101 et seq.** - “shall be guilty of malfeasance in office and shall, by such violation, be subject to be removed from office and in addition any member of such governing body who shall violate any of the provisions of this act, or neglect or refuse to perform any duty herein imposed, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than \$10 or more than \$1,000.”

Sales Tax (K.S.A. 79-3601 *et seq.*)

1. Watershed districts engaged in the sale and/or rental of tangible personal property are considered to be retailers, and as such, are required to collect and pay to the state of Kansas a sales tax upon the gross receipts from retail sales.
2. Watershed districts are exempt from the payment of sales tax on all purchases of tangible personal property or service, including the renting and leasing of tangible personal property purchased by the governmental subdivision and used exclusively for governmental subdivision purposes - **K.S.A. 79-3606(b)**.
3. All purchases of tangible personal property or services by a contractor for a watershed district project are exempt from state sales tax, provided:
 - the watershed district obtains from the state an exemption certificate; and furnishes a copy to the contractor; and
 - the contractor shall furnish a copy of the certificate to all suppliers from whom purchases are made. Upon completion of the project, the contractor shall submit a sworn statement, on a form provided by the State of Kansas, Kansas Department of Revenue, Division of Taxation, that all purchases made were entitled to sales tax exemption - **K.S.A. 79-3606(d)**.
4. A “Request for Project Exemption Certificate”, PR-76, may be obtained by visiting: ksrevenue.org.
5. Watershed districts may obtain a sales tax number by visiting: ksrevenue.org.

Reporting Payments on IRS Form 1099

1. An Internal Revenue Service (IRS) Form 1099 must be filed when:
 - Payments of \$600 or more are made to individuals, partnerships, trusts, estates and associations during a calendar year (this does not include wages as they are reported on W-2’s);
 - Payments were made by the watershed district with district funds; or
 - Payments were made by the watershed district from federal funds deposited in the district account.

Please Note: There are several different Form 1099’s; therefore, you need to check with your tax consultant to determine the proper form.

2. Due dates for Form 1099:
 - **January 31** - Form 1099 must be furnished to all individuals, partnerships, trust and associations, etc.
 - **February 28** -Form 1099 and Form 1096 must be filed with the IRS.

3. Forms required:

- **Form 1099** - A three-part form with three 1099's per page. Instructions are available in the publication "Instructions for Form 1099 Series, 1098, 5498 and 1096.
- **Form 1096** - Annual Summary and Transmittal of U.S. Information Return form that is used to transmit the 1099's to IRS. Instructions are on the form and in the above publication.

Forms can be obtained by calling IRS at 1-800-829-1040, or www.irs.gov, or check with a local tax consultant.

The IRS can assess penalties for not filing Form 1099's and not providing identification numbers.

Budgets for Taxing Subdivisions (K. S. A. 79-2925 through 79-2936)

Watershed districts are subject to state budget law, and in order to collect tax revenue, a district must first prepare and publish a budget. The amount of tax collected (mill levy) is based upon the projected expenditures for the upcoming year as indicated in the district budget. To increase the amount of revenue collected over the amount collected the previous year, the district's governing body must adopt a resolution. The Kansas Department of Administration's Office of Chief Financial Officer is responsible for providing all budget forms and resolutions. The Office of Chief Financial Officer is a good resource for assistance in preparing the various documents and outlining the overall budget process. The DOC recommends districts contact the Office of Chief Financial Officer directly. The following information is a guide for budget preparation and should not be used as a substitute for the above cited statutory authority.

1. **K.S.A. 79-2925**

This act shall apply to all taxing subdivisions or municipalities of state.

2. **Forms - K.S.A. 79-2926**

- a. The Office of Chief Financial Officer prepares and furnishes the prescribed forms for the annual budget.
 - Forms are furnished to the county clerk.
 - The county clerk delivers to the presiding officer of the taxing subdivision.

3. **Itemized Budget - K.S.A. 79-2927**

- a. The governing body of the taxing subdivision shall meet no later than the first day of August and shall prepare in writing on prescribed forms a budget itemized and classified by funds and showing amounts to be raised by taxation and from other sources for the ensuing budget year.
- b. Expenditures: the budget shall show
 - Amounts expended corresponding or other items during the preceding year.

- The amounts appropriated for corresponding or other items during the current budget year.
 - The ensuing budget year.
 - The budget for each fund shall not include any item for sundry or miscellaneous purposes in excess of 10% of the total.
 - The budget for each fund may include a non-appropriated balance of not to exceed 5% of the total of each fund. This amount is not included in the expenditure total. It is a budgeted carryover balance.
- c. Receipts: the budget shall show the amounts of revenue actually received from taxation and from other sources for:
- The preceding budget year.
 - The current budget year (actually received or estimated to be received).
 - The amount estimated to be received during the ensuing budget year with each source stated separately.
- d. The budget for expenditures for each fund shall balance with the budget of revenues, except for the non-appropriated balance.
- e. The portion of the budget delegated to revenues derived from ad valorem property taxation shall not exceed the amount of tax which can be raised by the fund levy limit. The fund levy limit is based upon the previous levy limit adjusted for total valuation increases.

4. **Budget Hearing - K.S.A 79-2929**

- a. A public meeting shall be held for the purpose of answering or hearing objections relating to the proposed budget and for the purpose of considering amendments to the proposed budget.
- b. The governing body shall give at least ten (10) days-notice of the time and place of the meeting by publication in a weekly or daily newspaper of the county having a general circulation. (Districts in more than one county will need to publish in each county.) The notice shall include:
- time and place of meeting.
 - the proposed budget.
 - all essential items in the budget shall be listed as designated by the Office of Chief Financial Officer on the special form prescribed and furnished with the budget forms package.
- c. Exception:

A taxing subdivision having an annual expenditure of \$500.00 or less shall not be required to include the proposed budget in the published notice.

5. Budget Amendment - K.S.A. 79-2929a

Taxing subdivisions that propose to amend an adopted current year budget shall refer to this section of the statute for amendment procedures. (Budgets cannot be amended to increase a tax levy.)

6. Submission of Budget - K.S.A. 79-2930

- a. The taxing subdivision shall submit the adopted budget to the county clerk on or before August 25th (K. S. A. 79-1801) and shall include:
 - Two copies of the budget certificate giving amount of ad valorem tax to be levied and total amount of adopted budget of expenditures by funds.
 - Copy of itemized budget forms for each and every fund.
 - Proof of publication of the notice of budget hearing.
 - Copy of resolution when action has been taken to increase the amount of tax to be levied (applies to watershed districts that increase levy above two mills - K.S.A. 24-1219.
- b. The governing body of the taxing subdivision shall not certify an amount of ad valorem taxes to be levied that is in excess of any tax levy rate or amount limitation.
- c. Allowance may be taken into consideration for delinquent taxes. This allowance shall not exceed by more than 5% the percentage of delinquency for the preceding year.

7. Time for Budget Hearing - K.S.A. 79-2933

- a. The budget hearing shall be held not less than ten (10) days prior to the date on which the taxing subdivision shall certify their annual levies to the county clerk as required by law.
- b. After hearing, the budget shall be adopted or amended and adopted as amended.
- c. No levy shall be made until and unless a budget is prepared, published and filled.

8. Funds Appropriated by Budget - K.S.A. 79-2934

- a. The budget as approved and filed with the county clerk shall constitute an appropriation for each fund and funds shall not be used for any other purpose.
- b. No money in any fund shall be used to pay for any indebtedness created in excess of the total amount of the adopted budget of expenditures for such fund.
- c. Any balance remaining in such fund at the end of the current budget year shall be carried forward to the credit of the fund for the ensuing year.
- d. The clerk or secretary of the taxing subdivision shall open and keep an amount of each fund, showing the total amount appropriated for each fund and shall charge such appropriation with the amount of any indebtedness created at the time such indebtedness is incurred.

- e. No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law.

9. Creation of Indebtedness - K.S.A. 79-2935

It shall be unlawful to create indebtedness in excess of the adopted budget expenditures for such fund for that budget year (see this section of the law and K.S.A. 10-116b for exceptions).

10. Removal from Office - K. S. A. 79-2936

Any member of the governing body, or any other officer of any taxing subdivision or municipality of the state, who violates any of the provisions of this act shall be subject to removal from office.

3. Board Meetings

Introduction.....	3-2
Meeting Management	3-2
Kansas Open Meetings Act.....	3-2
Quorum	3-6
Conference Calls	3-7
Regularly Scheduled Meetings	3-7
Special Meetings	3-8
Continued or Reconvened Meetings.....	3-8
Informal Meetings.....	3-8
Developing the Agenda.....	3-8
SAMPLE Agenda	3-9
Board Meeting Packets	3-10
Conducting the Meeting	3-10
Minutes Guidelines	3-13
Legal or Public Notice of Meetings	3-15
SAMPLE Minutes	3-19
General Plan.....	3-21
Five-Year Plan	3-21
SAMPLE Five-Year Construction Plan Report.....	3-23

Introduction

Meetings are fundamental to conducting watershed district business. Watershed district directors participate in watershed district board meetings, committee meetings of the State Association of Kansas Watersheds (SAKW), Kansas Department of Agriculture, Division of Conservation (DOC) and other organizations and agencies. Regular meetings of the board of directors shall be held no less than once each quarter on such day and place as selected by the board of directors. At these meetings, the board takes official action on plans, programs and functions of the district.

Meeting Management

Participants should be notified well ahead of the meeting - at least five days in advance as per **KSA 24-1212**. This notification should include an agenda, listing the reason for the meeting, location, time, items to be discussed, estimated meeting length and important reference materials. Watershed district directors and associate directors (if any) normally appreciate a reminder telephone call a day or two before the meeting. Pay close attention to meeting arrangements. Plan in advance for a comfortable room, parking, refreshments and audio-visual resources (easels, blackboards, slide projectors, public address systems, etc.). Arrange the room so that everyone has as much face-to-face contact as possible (i.e. a round table or square). If you invite the public, or guests, consider placing a name card or tent in front of everyone.

Kansas Open Meetings Act

In 1972, the Kansas Legislature passed the Kansas Open Meetings Act (KOMA) - **K.S.A. 75-4317 et seq.** This act applies to all watershed districts and must be adhered to by each district.

1. **State Policy:** In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public. It is declared policy hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection above.
2. **Meeting Defined:** As used in this act, "meeting" means any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business affairs of the body or agency.
3. **Public Notice:** Notice of the date, time, place and agenda of any regular or special meeting of a public body shall be furnished to any person requesting such information. - **K.S.A. 75-4318 and 24-1212.**
4. **Closed or Executive Sessions:**
 - a. The watershed district board may go into executive session during a board meeting for the purpose of discussing:
 - personnel matters of non-elected personnel;

- consultation with an attorney for the body or agency, which would be deemed, privileged in the attorney-client relationship;
- matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency; or
- preliminary discussions relating to the real acquisition of real property.

Note: Several topics that do not apply to watershed districts have been omitted from this list.

- No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.
- Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive session shall include a statement of:
 - the justification for closing the meeting;
 - The subjects to be discussed during the closed or executive meeting; and
 - the time and place at which the open meeting shall resume.
- Example Motion:** "Mr. Chairman, I move we recess into executive session to discuss the job performance of the district employee in order to protect the privacy of the parties involved. We will reconvene the open meeting in the conference room at 8:30 p.m."
 - Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency.
 - Discussion during the closed or executive session shall be limited to those subjects stated in the motion.

Summation / Clarification of KOMA:

- Gathering, assembly, telephone call or any other means of interactive communication:**
 - Informal discussions before, after or during recesses of a public meeting are held to be prearranged (Coggins v. Public Employee Relations Board, 2 Kan. App. 2d 416, 423, rev. denied 225 Kan. 843, 1978).
 - Informal gatherings held during a recess cannot be used to subvert the intent and purpose of the act (Stevens v. Board of Reno County Comm., 10 Kan. App. 2d 523, 525, 1985).
 - "Work Sessions" - title of the gathering is irrelevant if the meeting requirements are met (AG Opin. Nos. 80-197; 90-47).
- Discussing Business:**
 - The KOMA applies to the following: binding action is not necessary; it is not necessary that business be transacted (AG Opin. No. 79-200).

- b. "Meeting" includes all gatherings at all stages of the decision-making process (Coggins v. Public Employees Relations Board, 2 Kan. App. 2d at 423).
- c. Retreats and meetings held in private clubs probably prohibited, especially if site makes it impossible for public to attend without cost (AG Opin. Nos. 82-133; 80-148).

3. **Notice:**

- a. Request for notice must be made. Notice must be furnished to persons requesting it (AG Opin. No. 86-133).
- b. Notice given can be written or oral; a single notice can suffice for regularly scheduled meetings. Must notify of any special meetings (AG Opin. No. 83-173).
- c. No fee for notice can be charged (AG Opin. Nos. 81-137; 82-141).
- d. Residency of requestor is irrelevant (AG Opin. No. 81-137).
- e. Petitions requesting notice: notice required only to one designated person (K.S.A. 75-4318 (b) (1); AG Opin. No. 86-133).
- f. No time limit is imposed for receipt of notice prior to meeting. AG office has followed "reasonable time" standard, reasonableness depending on the circumstances (AG Opin. No. 81-15).
- g. Contrary to popular belief, the KOMA does not require notice of regular or special meetings to be published in a paper.

4. **Agendas:**

- a. The KOMA does not require an agenda be made.
- b. School board not required to have an agenda. If a body does have one, it can be amended (U.S.D. No. 407 v. Fisk, 232 Kan. 820, 1983).
- c. If body chooses to create an agenda, that agenda should include topics planned for discussion (Stevens v. City of Hutchinson, 11 Kan. App. 2d 290, 293, 1986).
- d. If an agenda is made, copies must be made available (AG Opin. Nos. 81-15; 86-133).
- e. Does not have to be mailed, can be provided by leaving in a public place (AG Opin. No. 79-218).

5. **Open Meetings:**

- a. Right to be present at a meeting, but no right to be placed on the agenda or to speak (check local ordinances or policies).
- b. Any person may attend open meetings (AG Opin. No. 80-43).

- c. **K.S.A. 21-4101** prohibits disorderly conduct or disturbing a lawful meeting; provides for criminal prosecution.
- d. Secret ballots not allowed - **K.S.A. 75-4318a** (AG Opin. Nos. 81-106; 86-176).
- e. Must be able to ascertain how each member voted (AG Opin. Nos. 86-176; 79-167).
- f. Subject to reasonable rules, cameras and recording devices must be allowed at open meetings (K.S.A. 75-4318e).
- g. The key to determining whether the location of a meeting would subvert the statutory mandate of openness is accessibility to the public (AG Opin. Nos. 86-153; 79-253; 82-133; 80-148).
- h. Telephone conference calls are allowed if the requirements of the act are met (AG Opin. Nos. 81-268; 80-173; 80-159).

Note: Speaker phones or an adequate number of telephones are required for a telephone conference call at a place accessible to the public.

6. **Executive Session:**

- a. Open meeting must be held before public body can recess into executive session (AG Opin. No. 81-22).
- b. Decision to hold executive session discretionary.
- c. Motion must be recorded in minutes.
- d. Although the minutes must contain the motion to go into executive session, KOMA does not require other information to be recorded either for open or executive sessions (AG Opin. No. 90-47). With the exception of motion for executive session or any other specific law requiring recordation, content of minutes discretionary.

Note: Watershed District Law requires districts to: "Maintain adequate historical record of proceedings, and of all resolutions, regulations and orders issued or adopted."

- e. Motion for executive session should contain subject and justification statement, which are not the same thing (AG Opin. Nos. 91-78; 86-33. See State v. U.S.D. 305, 13 Kan. App. 2d 117, 1988).
- f. Executive session cannot be used to discuss a letter received from an attorney if the attorney is not present (AG Opin. No. 86-162).
- g. Only the members of a public body have the right to attend executive session (AG Opin. No. 86-143).
- h. Mere observers may not attend (AG Opin. Nos. 82-176; 86-143; 92-56).

Note: In the event a watershed district board meeting is not held due to the lack of a quorum, the watershed directors who attend may receive meeting expenses. When writing the minutes for a meeting that was not held due to the lack of a quorum, set up the heading in the usual manner: name of district, address of meeting location, date, time, place and list those present. In the body of the minutes state: "Due to the lack of a quorum, no business was conducted. "Do not state that the meeting was "continued.

Conference Calls

Watershed districts may have instances where they know they are going to have a meeting of short duration and elect to hold a telephone conference call to reduce travel and other related expenses. This meeting is allowed under Kansas law provided certain guidelines are followed:

- a. Notice must be given to all members of the watershed district board prior to the meeting.
- b. The meeting is held for purpose of discussing the business or affairs of the watershed district.
- c. Number of members participating is sufficient for a quorum majority of watershed district directors.
- d. All members are given the opportunity to participate.
- e. Members do not merely telephone their separate votes to a meeting of other members physically assembled.

Meetings held pursuant to telephone conference calls are subject to the Open Meetings Act when such calls involve a majority of a quorum, even though the number of members involved is not enough to transact the business of a public body. The Open Meetings Act also applies to meetings where a quorum is present, (majority of watershed directors). In view of the purposes of the Open Meetings Act, which is to satisfy the general public's interest in the discussion of public issues by a governing body, the DOC strongly recommends the watershed district board initiate the telephone conference call using a speaker phone or a sufficient number of phones. This will enable the general public to have an opportunity to listen to the discussion of district business.

Regularly Scheduled Meetings

All watershed districts should have quarterly board meetings which have two basic purposes:

- a. To decide on watershed district policy.
- b. To monitor implementation of watershed district policy. (Watershed district board meetings also serve educational, social, and communication purposes.) At these meetings, the watershed district board of directors take official action on plans, programs and functions of the watershed district. The minutes are the official record of the

Transactions and proceedings of the board should contain complete and accurate information.

Special Meetings

A special meeting is any meeting, called for the purpose of dealing with watershed district business which cannot wait until the next regularly scheduled board meeting. In the event of a special meeting only that specific business for which the meeting was called can be discussed. No additional business may be addressed at the special meeting. The requirement for a quorum before any binding action can take place applies to special meetings.

The written minutes of the special meeting must contain the normal heading, date, time, place, who is in attendance and the meeting proceedings. Reason(s) for declaring the special meeting must be included.

Continued or Reconvened Meetings

A continued or reconvened meeting is one in which there was not sufficient time to cover all the business on the agenda at the regularly scheduled watershed district board meeting. Public notice including date, time, place of the continued or reconvened meeting shall be given by announcement at the original meeting. Only matters appearing on the agenda of the original meeting may be discussed at the continued or reconvened meeting.

Informal Meetings

The Open Meetings Act covers not only formal meetings but all informal meetings. When a majority of a quorum is together in an informal setting and discuss matters concerning the business of the public body, the discussion is applicable to the laws of the Kansas Open Meetings Act.

Developing the Agenda

The purpose of an agenda is to ensure orderly transaction of business and to give notice to the public regarding what will transpire at the meeting. An agenda should be prepared for each watershed district board meeting and be provided to anyone requesting it per the Kansas Open Meetings Act. The agenda must list the date, time and place of the meeting and all items to be considered at the meeting. To ensure that nothing requiring watershed district board action is overlooked, throughout the month a watershed district employee should retain a file of all incoming and outgoing correspondence and notes on any other topics the board needs to consider at the meeting. The President of the board should work with the district staff to develop a list of all topics to be placed on the agenda. Items of business on the agenda may be numbered for efficiency but is not required. Please see the following Sample Agenda for guidance.

SAMPLE

Agenda

Happy Watershed District Board Meeting
Conference Room - 123 4th Street, Gladville, Kansas 66666
Tuesday March 7, 2021

1. Meeting Called to Order - President
2. Approval of Minutes of Previous Meeting
3. Treasurer's Report - District Manager / Treasurer
4. Correspondence Received - District Manager
 - a. 02/21 DOC Minutes of January 10
 - b. 02/21 SAKW Annual Meeting
5. Natural Resources Conservation Service Report - District Conservationist
6. Watershed District Report - District Manager
7. Other Reports
 - a. RC&D - Milo Fields
 - b. Happy County Planning and Zoning Board - Earnest Wiseman
8. Review and Approval of Five-Year Plan
9. Unfinished Business - President
10. New Business - President
 - a. Election of Officers
 - b. Annual Designation of Official Depository
 - c. Bank Signature Cards
 - d. New Roadside Signs
11. Date / Time / Place of Next Meeting - President
Next Regular Board Meeting - April 4 at USDA Conference Room
12. Adjournment

Board Meeting Packets

Agendas should be prepared in advance of watershed district board meetings so that a copy can be mailed to each member of the watershed district board of directors and all interested persons prior to the meeting. The board may direct the district manager/secretary to prepare and send out to each director a board meeting packet containing copies of the previous meeting minutes, the agenda, treasurer's report and copies of significant correspondence or other material to be acted upon by the board. This will provide an opportunity for directors to be familiar with business to be discussed. If minutes are mailed in advance, the directors may waive reading the minutes during the meeting.

Conducting the Meeting

Watershed district board meetings should be business-like and professional. Robert's Rules of Order and other guides to parliamentary procedure will be helpful to the chair in conducting a smooth meeting. The Kansas Open Meetings Act always supersedes such guides when there is a conflict between the two.

- a. **Parliamentary Procedure:** In order to assist a governing body in accomplishing its business, an organized "Rules of Order" is needed. It is sometimes necessary for a governing body during its formal proceedings to "restrain" an individual to do what he or she pleases. Their actions may contradict the good of the whole, thus an accepted, traditional method of meeting conduct is used. Although parliamentary procedure is not state law, it is recommended that it be used to conduct a professional and efficient board meeting. Most meetings, especially formal meetings, are run on the basis of *Roberts Rules of Order*. Under these rules, a voting member suggests the watershed district board make a decision by stating a motion, "I make a motion that we ...". A second member of the board states their support for the motion by seconding the motion, "I second the motion." If not seconded, the motion drops. Once a motion has been made and seconded, the chair must restate the question / resolution and call for discussion and then a vote by the board. The board then discusses the merits of the motion. If a board member wants to change the motion, he or she can move to amend the motion. "I move we make an amendment of the motion that ..." This amendment must be seconded and voted on. Several amendments may be added to the original motion. After discussion, the President restates the motion, and the group votes on the motion or "motion as amended" and the decision is made. If the group agrees to pass the motion, then the "motion has carried." For more information, refer to Robert's Rules of Order which is widely available as a standard guide for policy making bodies. If a quorum of a district board is present and a majority of the members vote in favor of a particular matter, abstentions from voting are to be counted as acquiescence with the votes of the majority, and the action will bind the body. Abstentions from voting may not be counted as acquiescence where there is a tie vote and the proposition fail for lack of a majority voting in favor thereof.
- b. **Role of Directors in Board Meetings:** Every watershed district board member should take an active part in the watershed district's business and participate in discussion at the board meetings. In addition, each district director may be appointed by the President to serve on special interest committees that function as a service to the board. The President of each committee may be called on to give a report on the committee's activities at the board meeting.

c. **Suggested order of business for watershed district board meeting:**

- Meeting called to order
- Minutes of the previous meeting
- Treasurer's report
- Correspondence received
- NRCS and DOC reports (if attending)
- District employee(s) report
- Other reports
- Review of General and Five-Year Plans
- District programs
- Unfinished business from previous meeting
- New business
- Adjournment

d. **Actions of the watershed district board of directors:** Any decision or act that results in expenditure of funds, establishes or changes policy, represents watershed district opinion or approval, or causes an obligation of any kind on the part of the district requires official action of the board of directors.

The following suggestions are made to promote the directors understanding of documents which are presented for action at a board meeting.

e. **Approval of Minutes:** At the next regularly scheduled watershed district board meeting, the minutes of the previous meeting must be approved, either "as written", "as mailed", "as printed" or "as amended" by a vote of the board. The secretary should then sign the original copy of the minutes and date the signature. Minutes are not an official, permanent record until they are approved by the watershed district board.

f. **Corrections or Amendments to Minutes:** The minutes are a record of what actually occurred at the meeting. Corrections or amendments to minutes should make the record accurate, not change or "complete" an action. Changes or further actions should be considered under "Unfinished Business" at the next meeting. A mistake in the minutes can be corrected by action of the watershed district board at their next meeting under "Minutes of the Previous Meeting." The correction should be included in the motion for approval, such as, "A motion was made by Earnest Wiseman to correct the March 8 minutes and to approve the minutes as corrected by changing the narrative under Section XIII, New Business, paragraph E, to read 'Milo Fields will be in charge of getting bids for the new signs'. Seconded by Milo Fields. Motion carried."

The correction should be indicated in the actual minutes as well. This can be accomplished in one of three ways.

- Make a "pen and ink" change on the original minutes, indicate a cross reference to the amendment motion i.e., "as per amendment motion on (date amendment made), initial and date."
- Type the correct information, attach it to the minutes (containing the error) and beside the error make a cross reference statement to the amendment motion (same as in 1 above), initial and date and write "see attachment for amendment."
- Retyping the original minutes noting "as amended" next to the President's signature.

g. **Watershed district directors Review of the Treasurer's Report:** A detailed report of all bank accounts and petty cash should be reviewed at watershed district board meetings and made a part of the minutes. In order to effectively review financial statements each month, the previous month's treasurer's report should be presented along with the current month's statement. In reviewing the treasurer's report, the directors should consider:

- Compare reports to be sure the account balance at the end of the report period on the previous month's report is the same as the account balance at the beginning of the report period on the current month's report.
- Compare deposits. They will not be the same every month but should be similar. Certain deposits, such as interest earned should be close to the same amount.
- Compare disbursements. The amount paid to employees for salaries should be approximately the same every month, unless they are part-time workers whose hours fluctuate. Many other bills paid will be the same or close to the same amount. Question any major differences.
- Every month look for a check showing taxes paid or deposited. Find out whether the watershed district pays federal employment taxes quarterly or monthly. If it is monthly, the list of disbursements will contain a check depositing the taxes to a bank every month. If the district pays quarterly, there will be a check to the IRS after the close of every quarter. Also check for the State Withholding Tax and Employee Wage Contribution that are issued quarterly.
- Be sure every check is accounted for - the last check on the previous month treasurer's report should be the number that immediately precedes the first check number on the current treasurer's report.
- Voided checks should be listed on the treasurer's report and the actual check (with signature area torn off) should be either attached to the claim voucher or attached to the check stub in the checkbook.
- Petty cash must be accounted for with a separate report. For each disbursement the report will contain to whom the money was paid, the purpose and the amount. The report will also include receipt information and the fund balance. The only petty cash receipts are from the watershed district's appropriate fund replenishing the original amount (maximum \$50).

Note: The amount of the replenishing check should always be for the exact amount of the disbursements previously made from the petty cash account (sum of expense receipts). The replenishing check is made payable to " _____ Watershed District Petty Cash Account."

- Unpaid claims or bills must be presented (a list) to the governing body for payment approval of the **due and unpaid** claims - **K.S.A. 12-105b**. Items on a claims list represent the claim vouchers previously audited and approved by the treasurer as "correct, due and unpaid." The corresponding checks should be dated the day of the approval (watershed district board meeting date) and are signed following board approval. The claims list is for those services and products that have been provided and the bill (invoice / statement) is in-hand. These are **not** estimates and are not for services that have **not** been completed. In reviewing the bills to be paid, the watershed district directors should not hesitate to question an unusual bill or one that seems higher than usual.

- A motion must be made to pay the due and unpaid claims specifying the amount of approval. When a treasurer's report is made from meeting-to-meeting, it should be received. This means the report was heard; it does not give official approval of by the group. The treasurer's report should never be accepted or approved unless the books have been audited. A treasurer's report is audited when two or more members are requested to review all bills received and paid. All figures are checked. The auditors report that the books "are in good order and found correct." The auditors' report then is approved or accepted by the group. (Information based on Roberts Rules of Order.)
- h. **Personnel Actions:** All decisions regarding personnel actions must be reflected in the watershed district board meeting minutes for future reference. For new employees include name, position title, date of employment, duties, hours, wages, sick and annual leave benefits, and supervision (some of this information may be in other official documents i.e., employment contract). In addition, state whether an employee is to be full-time, part-time or temporary / seasonal. Official action (containing pertinent information) needs to be taken when an employment status/contract information change occurs. Under no circumstances can a secret vote be taken, regardless of the issue. Personnel matters may be handled in executive session in accordance with the Kansas Open Meetings Act, if necessary. However, motions and votes **must** be made publicly in the regular session and recorded in the minutes.
 - i. **Approval / Cancellation of General and Five-Year Plans:** Approval of general and five-year plans requires official action of the watershed district board of directors and must be listed in the minutes.
 - j. **Contracts, Obligations or Legally Binding Agreements:** Only the watershed district directors can enter into a legally binding agreement on behalf of the watershed district and only by a vote in an open meeting.

Minutes Guidelines

The minutes of the watershed district board meeting must contain enough information for anyone to look at them at a later date and determine what items were discussed in the meeting and what action was taken. The minutes are a permanent record of watershed district business and provide a history of the district. They are one of the most important documents in the district office.

- a. Why are minutes and records necessary?
 - Constitute the official record of the proceedings of meetings (annual, regular, special or emergency) of the watershed district and its governing body.
 - Keep watershed district officials and other persons informed.
 - Furnish a business-like authorization for the handling of watershed district affairs.
 - Promote functional continuity of activities.
 - Provide historical account of events and actions.
- b. Who is responsible for preparation and safekeeping of watershed district minutes and records?

- The secretary of the watershed district board of directors is responsible for the minute's contents.
 - The watershed district board reviews for accuracy and completeness, corrects (if necessary), and approves at the next meeting.
 - Secretary files and/or stores.
- c. When are minutes prepared?
- Notes are taken and reports or other items are received during the course of the meeting.
 - Full minutes are completed as soon as possible following the meeting.
- d. How are complete, accurate and orderly minutes developed?
- By preparing an agenda for meetings that lists place and time of meeting, correspondence, reports, old business, new business and possibly special items or features also serves as a meeting reminder and stimulates thought so directors are better prepared when arriving at meetings.
 - By completing actions on each item of business progressively.
 - By recording all motions in full and, when appropriate, reading back to board prior to final actions.
 - By making a complete record of the proceedings.
 - By the watershed district board secretary completing the official copy as soon after the meeting as possible.
- e. Where are minutes distributed?
- Watershed district file (official copy signed by the board President and by the person who prepared the minutes) current minutes are kept in the district managers/secretary's possession, usually in a file folder or notebook; non-current minutes are filed in a safe (preferably fireproof) location designated by the board.
 - Watershed district board members (supply with copies prior to next board meeting).
 - Cooperating agencies and groups as designated by board.
 - One copy to the DOC (e-mailed within 10 days after the meeting).
- f. What are the basic contents of minutes?
1. General Information:
 - Name of watershed district, meeting location and date.
 - Specify type of meeting, e.g. regular, special or emergency.
 - Full name and title of presiding officer and time of the call to order (quorum established?).
 - Full name and title of watershed board of directors present.
 - Full name and title of others present.
 2. Body of the minutes, business session (identify by full name the persons reporting, making motions and seconding motions).

Watershed districts may supplement the public or legal notice of meetings through a television and/or radio broadcast. Requirements of the stations broadcasting public or legal notices, as set forth in **K.S.A. 64-110**, are as follows:

- Stations must for a period of six months following the broadcast of legal advertisement, retain a copy or transcription of the text of the notice in their public file.
- Proof of broadcast must be determined by affidavit of the station manager, assistant manager or program director.
- Charges for advertisement cannot exceed the comparable rate charged by the station to commercial customers. Contract rates or volume discounts given to commercial customers must be available to persons or political subdivisions placing the advertisement, under the same terms and conditions as for commercial advertisements.

Note: It is not a requirement, under Kansas Statutes, for watershed districts to publish a legal notice or display notice of a regularly scheduled watershed district board meeting. It is however recommended of districts to announce at the close of a regularly scheduled meeting the time, date and place of the next meeting. The time, date and place is recorded in the district minutes. Under **K.S.A. 75-4318**, notice of the date, time and place of any regular or special meeting of a watershed district shall be furnished to any person requesting such notice.

EXHIBIT 3.2 EXAMPLE MINUTES

1. MINUTES (K.S.A.24-1211 AND 24-1212)

- a. A copy of the minutes and treasurer's report of each watershed district regular and special meeting shall be furnished to the DOC.
- b. A copy of the minutes of the watershed district annual meeting and report of the financial condition and activities of the district shall be furnished to the DOC.
- c. Minutes are the official record of the proceedings of watershed district meetings (regular, special and annual) of the district and its governing body.
- d. The minutes provide the legal authorization by the board for handling of watershed district activities.
- e. The minutes also provide a historical account of events and actions, keep watershed district officials and other persons informed and promote functional continuity of activities.
- f. The notice of meeting shall be mailed to each watershed board of director at least five days before the regular meeting and two days before a special meeting. An agenda of the meeting which lists the place and time of the meeting, communications, old business, new business and special items will serve as a meeting reminder and stimulate thoughts on district business.

The treasurer of every municipality (this includes watershed districts) shall keep a record of the amount of money on hand in the treasury, which record shall show at all times the amount of money in each particular fund - **K.S.A. 10-1117 and 10-1118**. A report of the financial condition of the district and bills due and payable should be made at each regular meeting. A copy of the report is filed with the minutes. One copy of the treasurer's report is mailed to the DOC with the minutes of the meeting. Guidelines for a treasurer's report format will be developed and distributed at a later date.

SAMPLE

Minutes

The Water Creek Watershed District No. 122 Board of Directors regular meeting was held at the district office, 102 South Main, in Anywhere, Kansas 6666 on Thursday, April 27, 2021.

The meeting was called to order by President John Doe at 8:00 pm

Also present were:

Bill Jones, Vice President

Tom Williams, Secretary

Ralph Thomas, Treasurer

JM Morgan, Member

Melvin Smart, Landowner

JC Land, NRCS District Conservationist

Ruben Law, Attorney

IM Worker, Contracting Officer

A quorum of board of directors was present.

Minutes: The minutes of the regular meeting held on March 27, 2021, were approved. (If a correction is made, then state, “were approved as corrected to read” and include correction.”)

Treasurer’s Report: The board reviewed the treasurer’s report of the expenditures, receipts and other activities since the last meeting and bills payable. Motion by JM Morgan, seconded by Tom Williams to accept the treasurer’s report and to make payment of all bills totaling \$3,946.45 as listed under Bills Payable. Motion passed. A copy of the treasurer’s report is attached to the official minutes.

Correspondence Received: The president reviewed a letter received from the Division of Conservation giving the procedures to follow in submitting applications for cost-share assistance for 2022. The treasurer read a letter from Will B. Checked, CPA, stating that the audit for 2019 will be completed by June 1, 2020.

Reports: IM Worker discussed the informational meeting held on April 2 and 3 for the Water Creek Project. The main concern of the 84 people in attendance was the involvement of Flood City in cost-sharing on the study. He recommended completing the land treatment and design data study and construction proposal and presenting this to the Flood City Council for financial assistance. Ralph Thomas reported that he had been working on the budget for next year and preliminary budget information will be presented at the next meeting.

Unfinished Business: None

New Business: Motion by Bill Jones, seconded by Ralph Thomas, to submit application on site #2, (Harold Korn) to the Division of Conservation for state assistance. Motion carried.

Motion by JM Morgan, seconded by Bill Jones, to present the land treatment and design data study proposal and the construction proposal to the Flood City city council at their May 2nd meeting. Motion carried.

Motion by Tom Williams, seconded by Ralph Thomas to purchase a Panasonic model FP-1520 copy machine from the Office Supply Company for \$2,221 with a purchase price to include copier stand, two trays and 90-day warranty. Motion carried.

The date of the next meeting will be May 25, 1921, in the district office.

Motion by Tom Williams, seconded by JM Morgan to adjourn. Motion carried. Meeting adjourned at 9:15 pm.

President

Secretary

General Plan

General Plan Review - K.S.A. 24-1216B.

- a) Ten years following approval of the general plan and every five years thereafter, the board shall review the general plan to:
 - i) Determine if projects proposed to be undertaken in its original plan are still feasible
 - ii) In current public interest.
- b) A report of the review shall be given at a public meeting called for that purpose.
- c) This review is not required of watershed districts that have completed all projects in the general plan.
- d) Any revisions or amendments to the general plan as a result of the review shall be submitted to the Chief Engineer, Kansas Department of Agriculture, Division of Water Resources (DWR) prescribed by **K.S.A. 24-1213** as amended.

Five-Year Plan

Five-Year Construction Plan Report:

- a. **K.S.A. 24-1211** was amended (shown by underlining> by the 1987 Legislature to read as follows:

“In not less than 12 months, nor more than 13 months after the recording of the certificates of incorporation, and annually thereafter, a meeting shall be held for the election of directors whose terms expire and also to render a report on the financial condition and activities of the district including the estimated construction date of all proposed projects to be initiated within the next five years and the board’s determination as to whether each of these projects is still cost effective and in the current public interest.”

“Copies of the minutes of the annual meeting and report on the financial condition and activities of the district shall be furnished to the Division of Conservation”

- b. The five-year construction program and reporting thereof to the DOC is required by all watershed districts, except those that have completed all planned projects in their general plan.
- c. The State Water Plan recognizes the importance of the watershed districts flood control efforts. The State Water Plan also recommends enhanced funding for the purpose of providing state cost-share assistance in the construction of watershed dams. DOC begins to develop budget requests nearly two years ahead of the time the money becomes available. The development of the five-year construction plan by each district, therefore, provides pertinent information to this planning process.

In order to assist districts in this effort and also to establish a uniform reporting procedure, a “Five-Year Construction Plan” report form has been developed. The five-year plan will require considerable site evaluation, contacts with landowners, establishing of district priorities and financial considerations.

- d. After the initial five-year plan is finalized, the statute requires the plan to be reviewed each year at the annual meeting and updated as needed. A copy of the district’s new five-year program is to be sent to the DOC along with the copy of the minutes of the annual meeting and report of the financial condition and activities of the district.
- e. Following is a sample Five-Year Construction Plan Report.

SAMPLE

WATERSHED DISTRICT FIVE-YEAR CONSTRUCTION PLAN REPORT TO THE DIVISION OF CONSERVATION (K.S.A. 24-1211 as amended)

District Name and No.: _____

Date Submitted: _____

The following is a list of all watershed structures (dams) and other projects planned for the five-calendar years indicated. NONE has been typed in the Dam Site No. column when no construction is planned for a calendar year.

Calendar Year	Dam Site No. or Project Description	County	Legal Description	Drainage Acres	Current Estimated Costs		State Funds to be Requested (Yes or No)
					Construction	Engineering	

The above five-year construction plan was approved by the Board of Directors at the _____, 20_____, meeting. We will review this at the next annual meeting and update as necessary. A current five-year program will be reported to the Kansas Department of Agriculture, Division of Conservation for use in planning budgets and work scheduling.

President

Secretary

4. Cost-Share Administration

Guidelines for Division of Conservation Cost-Share Assistance	4-2
Program Objectives.....	4-2
Program Explanation	4-2
Eligibility Criteria for New Construction and Rehabilitation.....	4-2
Permits	4-4
Environmental Review Process	4-4
Funding Criteria and Limitation	4-4
Funding Process	4-5
Payments	4-5
Supplemental Application for Funds	4-5
Operation and Maintenance	4-6
Supplemental Guidelines	4-6
Riparian and Wetland Protection	4-6
KDA-DOC New Administrative Policy	4-7

Division of Conservation Guidelines For State Cost-Share Assistance In Watershed Dam Construction

The purpose of the state cost-share assistance in the Watershed Dam Construction Program is to assist in flood control protection and grade stabilization by construction and rehabilitation of detention dams and/or grade stabilization structures in organized watershed districts and other special purpose districts that have an approved general plan.

Program Objectives

1. To stabilize streams to prevent degradation of the drainage area because of excessive erosion.
2. To provide protection to agricultural land, urban areas, transportation systems, and utilities from water and siltation damages as well as safety for people and / or domestic and wild animals.
3. To provide protection from siltation and pollution to water supply storage and streams.
4. To improve upland wildlife habitat on agricultural land.

Program Explanation

The program is available for state cost-share assistance in watershed dam construction in watershed, drainage or other special purpose districts for detention and/or grade stabilization structures included in a district's general plan.

Eligibility Criteria For New Construction & Rehabilitation

1. **New Construction:**

The **MINIMUM REQUIREMENTS** that must be met before an application for new construction is accepted for possible state assistance are:

- a. **General Plan:** A copy of the district's general plan and amendments shall be on file in the Division of Conservation (DOC) office. K.S.A. 24-1216b states "Ten years following approval of the general plan and every five years thereafter, the board shall review the general plan to determine if the projects proposed to be undertaken by the district in its original plan are still feasible and in current public interest. A report of the review shall be given at a public meeting called for that purpose." In addition, the proposed project must be included in the approved district general plan.
- b. **Five-Year Construction Plan - K.S.A. 24-1211.**
 - A copy of the updated five-year construction plan, in the prescribed format, shall be on file in the DOC office.
 - The proposed construction project shall be included in the five-year construction plan.

- c. **Minutes and Treasurer's Report:** A copy of the minutes of the Board of Director's meetings (regular, special, and annual), including the treasurer's report, shall be on file in the DOC office - **K.S.A 24-1211 & 1212.**
- d. **Land Treatment:** Seventy-five percent (75%) or more of the drainage area of the site must be adequately protected by approved conservation measures. Special emphasis shall be placed on cropland to assure the proper protection of the site from sedimentation.
- e. **Benefit-Cost Ratio:** The benefit-cost ratio shall be 1:1 or greater. Benefits claimed shall be substantiated by the following entities:
 - Water quality - Kansas Department of Health & Environment and the watershed district.
 - Recreation - Kansas Department of Wildlife, Parks and Tourism and county commission or city (as appropriate).
 - Road / Bridge - Kansas Department of Transportation and county commission (as appropriate).
 - Utilities - utility company affected.
- f. **Annual Maintenance Report:** A current copy of the annual maintenance report for all structures built with state assistance shall be on file in the DOC office.
- g. **Contracting Officer/District Manager:** The district shall employ or otherwise acquire the services of a Contracting Officer / District Manager who is knowledgeable of watershed dam construction and administrative procedures. The Contracting Officer / District Manager or designee shall attend a Contracting Officer / District Manager seminar and/or watershed district administration workshop (if available) and have a current Watershed District Handbook.
- h. **Receipt of Application:** The application for new construction shall be complete and received on or before the due date of April 1st to be considered for funding in the next fiscal year

2. **Rehabilitation:**

The MINIMUM REQUIREMENTS that must be met before an application for rehabilitation is accepted for possible state cost-share assistance are:

- a. All districts flood control structures are eligible for rehabilitation regardless of the funding for their original construction.
- b. **General Plan:** The site in question is in the district approved General Plan or its amendment(s).
- c. **Minutes and Treasurer's Report:** A copy of the minutes of the board of director's meetings (regular, special, and annual), including the treasurer's report, shall be on file in the DOC office - **K.S.A 24-1211 & 1212.**

- d. **Annual Maintenance Report:** A current copy of the annual maintenance report for all structures built with state assistance shall be on file in the DOC office.
- e. **Contracting Officer / District Manager:** The district shall employ or otherwise acquire the services of a Contracting Officer / District Manager who is knowledgeable of watershed dam construction and administrative procedures. The Contracting Officer or designee shall attend a contracting officer seminar and/or watershed district administration workshop (if available) and have a current Watershed District Handbook.
- f. **Receipt of Application:** The application for new construction shall be complete and received on or before the due date of July 1st to be considered for funding in the next fiscal year.

Permits

A Division of Water Resources (DWR) Permit to Construct, as well as the Corps of Engineers permits, shall be issued before an application for state assistance is considered by DOC. If DWR determines that the project is exempt under the Streams Obstructions Act, then the structure must meet the DOC new administrative policy dated May 13, 2013, see page 4-7.

Environmental Review Process

1. The Environmental Coordination Act (ECA) review process is required when a Permit to Construct is requested from the Division of Water Resources. The ECA review process reports will provide DOC with the reviewing agency concerns. The following agencies are included in the ECA review process:
 - Kansas Department of Wildlife, Parks and Tourism
 - Kansas Forest Service
 - Kansas Biological Survey
 - Kansas Department of Health & Environment
 - Kansas State Historical Society
 - Kansas Corporation Commission
 - Division of Conservation

An attachment to the application shall provide the district's explanation of procedures to address the concern(s) expressed in the ECA review.

Funding Criteria and Limitations

1. The maximum cost-share level for construction costs shall be 70% of the actual costs for labor and material necessary for completion of a structure and components.
2. State funds shall be available for the actual costs of engineering, geologic investigations, and inspections, not to exceed an amount equal to 10% of the actual construction costs.

3. The maximum annual amount of state assistance shall be \$120,000 per district, except when uncommitted funds are available after all eligible structures have been funded.
4. State cost-share funds, for new construction, are not available for:
 - structures authorized for funding under federal assistance programs;
 - land rights and water rights; or
 - administrative costs.

Funding Process

1. DOC staff shall prioritize the applications and make funding recommendations.
2. Funds not utilized (returned, cancelled, etc.) shall be used for partially funded applications, supplemental applications, or if sufficient funds are available, the highest eligible priority non-funded application.
3. Applications not funded may be held on file for possible future funding.

Payments

1. Partial payment requests shall:
 - be made on properly completed forms prescribed by DOC be made no more than once per month;
 - not exceed 65% of the cost of materials delivered to site and/or construction completed as per progress report; and
 - not exceed 95% of state funds obligated for the project.
2. Final payment of state cost-share funds shall be made:
 - upon notification of completion of the project;
 - when final payment request forms have been submitted; and
 - after DWR has issued a Certificate of Completion. If DWR determines that the project is exempt, a proof of completion signed by a Kansas Professional Engineer would suffice.
3. The district shall notify DWR sources, and DOC when the structure is complete and ready for final inspection.
4. The district shall maintain accurate records of the receipts and expenditures of all funds of the project and shall submit, upon request, an audited accounting of all funds of the project.

Supplemental Application For Funds

A supplemental request for state cost-share assistance may be made after completion of construction of a new structure that:

- Was partially funded;

- Had unexpected costs of construction and engineering exceeding the approved state funding provided; or
- The supplemental request does not exceed the limitations set forth.

Operation and Maintenance

The district shall, or has contractual agreement with responsible parties to, operate and maintain the structure in a manner satisfactory to DWR.

1. The district shall maintain the structure in a safe and functional condition for the design life or the life of the structure, whichever is the longer.
2. The district shall perform an annual maintenance inspection and report the deficiencies and corrective action to be taken to DOC.
3. The district is responsible for costs of maintenance and repair.
4. Failure to perform proper maintenance or repair on completed structures shall cause the district to be ineligible for state cost-share assistance for dam construction and or rehabilitation until corrective measures are completed.

Supplemental Guidelines

1. DOC's Guidelines for the State Cost-Share Assistance in Watershed Dam Construction shall include the provisions and procedures within the:
 - permanent administrative regulations;
 - Watershed District Handbook;
 - Application for State Cost-Share Assistance in Watershed Dam Construction;
 - Contract for Cost-Share Assistance in Watershed Dam Construction;
 - Application for Supplemental Cost-Share Assistance in Watershed Dam Construction; and
 - Contract for Supplemental Cost-Share Assistance in Watershed Dam Construction.
2. All contracts between DOC and the districts shall be subject to the provisions of these guidelines and state statutory requirements.

Riparian and Wetland Protection

Special emphasis shall be placed on riparian and wetlands protection. Districts are encouraged to involve the following agencies in the planning of each structure to be constructed and possible state cost share assistance:

- county conservation districts;
- Kansas Forest Service and KSU Extension Forestry;
- Kansas Department of Wildlife, Parks and Tourism; and
- US Army Corps of Engineers.

New Administrative Policy

May 13, 2013

In light of the changes in the Streams Obstructions Act (implementation of House Bill 2363) the DOC is adopting the following policy for Watershed Districts seeking cost-share assistance for the construction, rehabilitation or inundation mapping for flood control structures.

Flood control structures that will not be jurisdictional (no DWR dam safety permit will be required), should be:

- As proposed in the General Plan or subsequent amendments (location, hazard and class),
- Feasible: B/C greater than 1,
- Detention storage computation should be:
 1. Low Hazard, Flood Control 4% chance
 2. High or Significant Hazard, Flood Control 2% chance
- Permanent pool capable of storing the 50-yr. sediment load.
- Drawdown pipe should evacuate 90% of the volume of the permanent pool in 14 or fewer days.
- Principal spillway pipe should evacuate 95% of the of the detention storage in 14 or fewer days.
- Designed with sound engineering principles and practices by a Kansas Licensed Professional Engineer.
- Constructed under the supervision of a Kansas Licensed Professional Engineer.
- A certificate of completion signed by a Kansas Licensed Professional Engineer will be required prior to final payment request.
- A Breach Inundation Map.
- A Water Right permit if the sediment pool storage is greater than 15 ac-ft.
- A USACE 404 permit or a Nationwide permit.

5. Construction

Instructions for New Construction Application.....	5-3
FORM - New Construction Application.....	5-5
Attachment No. 1 - Land Treatment.....	5-7
Attachment No. 2 - Benefit to Cost Ratio.....	5-8
Supplemental Application	5-9
FORM – Supplemental Application	5-10
Construction / Rehabilitation Program Worksheet.....	5-12
FORM – Construction / Rehabilitation Program Worksheet	5-13
Bid Procedure Guidelines	5-14
SAMPLE – Invitation for Bid	5-15
SAMPLE – Worksheet for Invitation for Bids	5-16
Competitive Sealed Bidding Guidelines.....	5-18
SAMPLE – Bid Schedule	5-19
Competitive Sealed Bidding Guidelines (continued)	5-20
SAMPLE – Bid Summary	5-24
SAMPLE – Notice of Award of Bid	5-26
Public Works Bond and Performance Bond	5-27
SAMPLE - Public Works Bond.....	5-29
SAMPLE - Performance Bond	5-31
Dam Construction Contract	5-33
SAMPLE – Dam Construction Contract	5-34
Permits Conditions.....	5-37
Cash Basis Law.....	5-38

FORM – Cash Basis Law	5-39
Sales Tax Exemption	5-40
Pre-Construction Conference Guidelines	5-40
SAMPLE – Pre-Construction Conference	5-41
Notice to Proceed.....	5-42
SAMPLE – Notice to Proceed	5-43
Instruction for Request for Payment.....	5-44
FORM – Request for Payment	5-45
Instruction for Construction Progress Report	5-47
FORM – Construction Progress Report.....	5-48
Instructions for Change Order	5-49
FORM - Change Order	5-50
Dam Inspection Report	5-51
FORM – Dam Inspection Report	5-52
Compensatory Mitigation Easement	5-54
Memorandum of Understanding	5-54
Conservation Easement	5-55
FORM – Memorandum of Understanding & Conservation Easement.....	5-56
Exhibit A	5-60
Exhibit B	5-61
Closing Checklist for Third Party Easement Holder	5-67
FORM – Closing Checklist for Third Party Easement Holder	5-68

Application for State Cost-Share Assistance Watershed Dam Construction

Instructions for New Construction Applications

The following instruction will assist in the completion of the application form for constructions of new flood control structures. All forms may be copied but please use one side of paper only.

- Section 1. Complete legal name of district and mailing address to receive all correspondence pertaining to the application.
- Section 2. Complete structure and/or site number.
- Section 3. Complete permit information.
- Section 4. Complete General Plan date.
- Section 5. Complete site description information.
- Section 6. Complete structure size information.
- Section 7. Complete sediment pool information.
- Section 8. Complete detention pool information.
- Section 9. Engineers estimated construction and engineering costs for the project.
- Section 10. Complete cost-share amount information. [KAR 11-3-4 authorizes cost-share up to 70% of the cost of construction plus the actual costs of engineering, geologic investigations and inspection costs not to exceed 10% of the actual cost of construction. The maximum annual cost-share per district or site per year is \$120,000.]
- Section 11. List all anticipated sources and amounts of funds to be used for the project other than state cost-share funds.
- Section 12. State the benefits of the structure with explanations. [The benefits of the structure are important justification for the structure – be thorough and realistic in listing the benefits.]
- Section 13. Provide an attachment which contains the district’s explanation of procedures to address concerns expressed in the Environmental Coordination Act (ECA) review process.
- Section 14. Review the statements of Watershed District Responsibilities which are being accepted.
- Section 15. Complete all information and signatures as requested.

- Section 16. Complete the watershed district board's agreement and authorization to submit the application with the appropriate original signatures. [The application must be authorized by the Board of Directors.]
- Section 17. Include all required attachments with the application:
- Land Treatment Practices above site - this information is available from the conservation district. Use the format prescribed by the KDA-DOC in Attachment 1.
 - Total land adequately treated / protected must be at least 75% of the drainage areas.
 - Benefit to cost ratio, calculations and substantiation - complete this sheet with information as requested and attach substantiation of benefits.
 - Recent aerial photograph and a 7.5 min quadrangle maps of the site and to primary benefit areas.
 - Explanation of procedures to address concerns expressed in the Environmental Coordination Act (ECA) review process.
- Section 18. The original application is due no later than April 1st to be eligible for inclusion in the budget request for the next fiscal year.



**Application for State Cost-Share Assistance
Watershed Dam Construction**

New Construction Application

Application for State Cost-Share Assistance for Dam Construction	1.Applicant: _____ _____	
Mail To: Kansas Department of Agriculture - Division of Conservation, 1320 Research Park Drive Manhattan, KS 66502 Phone: (785) 564-6620 E-mail: kda.doc@ks.gov	2. Structure No. _____ 3. Date permit issued: a. Permit to construct _____ b. 404 permit _____ c. _____ d. _____	4. General Plan adopted by Board on: _____ _____ _____
5. Description of site: a. Legal _____ b. County _____ c. Drainage (acres) _____	6. Structure size: a. Cubic yards _____ b. Height (feet) _____	
7. Size of Sediment Pool: a. Volume (acre-feet) _____ b. Surface (acres) _____	8. Size of Detention Pool: a. Volume (acre-feet) _____ b. Surface (acres) _____	
9. Estimated costs: a. Construction \$ _____ b. Engineering \$ _____ c. TOTAL \$ _____	10. State cost-share assistance requested: a. Construction \$ _____ (Maximum 70%) b. Engineering \$ _____ (Maximum 10% of 9a) c. TOTAL \$ _____ (Maximum assistance-\$120,000 per district.)	
11. Sources of funds other than state assistance:		
a. _____	\$ _____	
b. _____	\$ _____	
c. _____	\$ _____	
d. _____	\$ _____	

12. Benefits of the structure. (Individuals, county roads, bridges, utilities, water quality, flood control, wildlife, fish and other benefits.) Use additional pages if necessary.

Benefits

Explanation of Benefits

_____	_____
_____	_____
_____	_____

13. The explanation of procedures to address concerns expressed in the Environmental Coordination Act (ECA) review process is attached.

14. The district will:

- a. Itself, or has contractual agreement with responsible parties to, operate the structure in a manner satisfactory to the Chief Engineer, Division of Water resources, Kansas Department of Agriculture.
- b. Maintain the structure in a safe and functional condition for the life of the structure.
- c. Perform an annual inspection and send copy of inspection to the Division of Conservation.
- d. Perform necessary maintenance at district expense.

15. The officers signing this application on behalf of the board of directors of the district certify that the information and statements in the application are true and correct.

_____ District No. _____

Watershed District

_____ Date _____

President

Attest _____ Date _____

Secretary

16. This action authorized at an official meeting of the Board of Directors on _____, 20_____, and is properly recorded in the district minutes of that date.

Attest _____, Secretary

17. Attachments- A complete application must include the following attachment:

- No. 1- Land treatment Practices above Site.
- No. 2- Benefit to Cost ratio, Calculations and Substantiation.
- No. 3- Aerial Photograph and 7.5 min. Quad maps of Site and Primary Benefit Area.
- No. 4- Environmental Coordination Act (ECA) Response.

18. Submit original to the Division of Conservation no later than April 1st.

ATTACHMENT NO. 2

Benefit to Cost Ratio

1. Site No.: _____ 2. Benefit-Cost Ratio: _____

3. Date of Termination: _____

4. Determination Made by: _____

Name

Address

Telephone Number

5. Factors and computation used in determination of benefit-cost ration are listed below or separate sheet is attached:

**Supplemental Application for State Cost-Share Assistance
Watershed Dam Construction**

If approved funding amounts to less than \$120,000 but not exceeding 80% of the total construction costs, the district may request supplemental funding using the Supplemental Application. Please see following “Supplemental Application for State-Cost Share Assistance” for reference.

10. The officers signing this application on behalf of the board of directors of the district certify that the information and statements in the application are true and correct.

_____ District No. _____

Watershed District

_____ Date _____

President

Attest _____ Date _____

Secretary

Construction / Rehabilitation Program Worksheet

All documents listed in the Construction / Rehabilitation Program Worksheet are required and must be submitted prior to requesting any payment / reimbursement. Please see following “Construction / Rehabilitation Program Worksheet” for reference.



CONSTRUCTION / REHABILITATION PROGRAM WORKSHEET

DISTRICT NAME: _____ **DISTRICT NO.** _____

FLOOD CONTROL SITES: _____

DATE OF ACTION:

- 1. Application for cost-share assistance approved by the
 Kansas Department of Agriculture – Division of Conservation..... _____
- 2. Agreements (2) prepared and mailed on..... _____
- 3. Signed agreements (2) returned on..... _____
- 4. Copy of minutes authorizing district to enter into agreement received on..... _____
- 5. Request from District for publication in Kansas register received on..... _____
- 6. Published in Kansas Register on..... _____
- 7. Bids opened on..... _____
- 8. Copy of minutes awarding contract received on..... _____
- 9. Copy of minutes naming person to approve modifications received on _____
- 10. Copy of contract for construction received on..... _____
- 11. Copy of performance bonds received on..... _____
- 12. Copy of public works bond received on..... _____
- 13. Copy of bid summary received on..... _____
- 14. If low bid not accepted, a statement or justification for acceptance of higher bid..... _____
- 15. Cash basis law compliance letter received on..... _____
- 16. Pre-construction meeting notification received on _____

Agreement is ready for processing of payment requests as of..... _____

AUTHORIZED BY: _____

DATE: _____

Bids Procedure Guidelines

1. **Paragraph (b), K.S.A. 75-3739** states that: If the amount of the purchase is estimated to exceed approximately \$50,000.00, sealed bids shall be solicited by public notice published once in the Kansas Register not less than 10 days before the date stated therein for the opening of such bids. Also solicit such bids by sending notices by mail to all active prospective bidders known. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

2. The following guidelines shall be followed to assure the provisions of **K.S.A. 75-3739(b)** are met:
 - a. Invitation for bids in excess of \$50,000 shall be publicized in the Kansas Register. The Kansas Register is the official legal paper for the State of Kansas and governmental subdivisions. The following procedure will be used to assure the notice is published:
 - The Secretary of State's office requires that the publication request come from the Division of Conservation. The Kansas Register comes out every Thursday and information to be included has to be submitted by noon of the Thursday before publication. Therefore, each district shall submit to the Division of Conservation the following information at least 24 days before the date of sealed bid opening: (a Sample Memo is attached and may be used by filling in the required information.)
 - (1) District full name and number.
 - (2) Construction site number.
 - (3) County.
 - (4) Location where sealed bids will be received. (Full Name, Address, Zip)
 - (5) Final date and time to receive bids.
 - (6) Date and time to open bids.
 - (7) Location of bid opening.
 - (8) Name, address and telephone number of person in the office to contact for copies of plans and specifications.
 - (9) Location where plans and specifications can be reviewed.

 - The Division of Conservation will prepare the notice and submit it to the Secretary of State for publication in the Kansas Register. There is a charge of \$7.00 per column-inch for publishing in the Kansas Register (this charge is subject to change). Most notices are three column inches. The Secretary of State's office will send a bill to the district.

 - b. Invitation for bids are recommended to be publicized in a newspaper of local and general circulation and industry or association newsletters, etc.

 - c. Invitation for bids shall be sent to all known prospective bidders, **as per the following** sample "Invitation for Bid" and sample "Worksheet For Invitation for Bids".

SAMPLE

INVITATION FOR BID **(CONSTRUCTION CONTRACT)**

Happy Watershed Project,
Site 3-4A Approximately
3 Miles North of My City
Kansas in My County

Invitation No. 36-3-4a
Date: December 22, 2021
Issued by the Contracting
Local Organization:
Happy Watershed Joint
District No. 999

Sealed bids, in single copy, for the work described herein will be received until 7:00 pm, local time at the place of bid opening, December 22, 2021 in the Happy Watershed District Office, My City, Kansas, and at that time publicly opened. Mailing address-Happy Watershed WJD 999, My City, Kansas 66666.

Arrangements for inspecting the work site may be made by contacting John Doe, Contracting Officer for Happy Watershed District, (phone number and or email).

Bid security in an amount of not less than five percent (5%) of the total bid price, must be submitted with each bid. Security may be in the form of a bid bond, cashier's or certified check, postal money order or cash. If check or money order is used, it must be made payable to the Happy Watershed Joint District No. 999. Bid security, other than bid bonds, submitted by unsuccessful bidders will be returned as soon as practicable after award of contract.

The successful bidder will be required to execute district contract and also furnish to the Contracting Local Organization a performance bond and a payment bond in penal sums of not less than one hundred percent (100%) each of the original amount of the contract.

The work shall be commenced within twenty (20) calendar days and be completed within on hundred and thirty (130) calendar days after the date of receipt of the Notice to Proceed.

A penalty of \$300.00 per work day be charged against the contractor for each work day required to complete this contract in excess of the one hundred and thirty (130) calendar days given to complete this contract.

Notice: The Bid Schedule, General Provisions, Special Provisions, Instructions to Contractors, Specifications and Drawings listed under contracts will be incorporated in and become a part of the resultant contract.

SAMPLE

WORKSHEET FOR INVITATION FOR BIDS

Invitation for Bids No _____

Happy Watershed Joint District No. 999
C/O John Doe
My City, Kansas 66666

Sealed bids, in single copy, will be received in the Happy Watershed District office, My City, Kansas, until 7:00 pm, local time at the place of bid opening, December 22, 2021, and then be publicly opened and read for construction and vegetation of one (1) earthfill floodwater retarding structure_____. This structure is located with the Happy Sub-watershed _____ in _____ county, Kansas.

- | | |
|---|-----------------|
| 1. Seeding, Mulching & Fertilizer | 10.7 Ac. |
| 2. Mobilization | Lump Sum |
| 3. Water | 1300 M. Gal. |
| 4. Excavation, Common | 10,450 Cu. Yds. |
| 5. Earthfill, Embankment | 69,500 Cu. Yds. |
| 6. Earthfill, Hand Compacted | Lump Sum |
| 7. Earthfill, Misc. | Lump Sum |
| 8. Earthfill, Random | 8,354 Cu. Yds. |
| 9. Drainfill | 25 Cu. Yds. |
| 10. Reinforced Concrete (Class 4000) | 15.7 Cu. Yds. |
| 11. Steel Reinforcement | 500 Lbs. |
| 12. Reinforced Concrete Pipe, 24" Diameter | 184 Lf |
| 13. Reinforced Concrete Pipe (Riser, 36" Diameter, W/Tees | Lump Sum |
| 14. CMP, 12" Diameter | 42 Lf |
| 15. Trash Rack | Lump Sum |
| 16. Special Area Fences (Smooth Wire) | 5,000 Lf |
| 17. Knife Gate Valve, 10" Diameter | Lump Sum |

- | | |
|---|---------|
| 18. Rock Riprap Around Inlet | 11 Tons |
| 19. Plastic Drainage Pipe, 4" Diameter | 74 Lf |
| 20. Corrugated Metal Pipe, 36" Diameter | 56 LF |

All bids must be accompanied by bid bond, certified check, cashier's check, money order, or cash in an amount not less than five percent (5%) of the amount bid

The successful bidder will be required to execute a formal contract and furnish performance and payment bonds in amounts of 100% each of the total amount of the contract.

Corporations executing the bonds as sureties must be among those appearing on the US Treasury Department's list of approved sureties.

All work shall be completed within 130 calendar days after the date of receipt of Notice to Proceed.

Arrangements for inspecting the work sites may be made by contacting the Contracting Officer, Happy Watershed Joint District No. 999, My City, Kansas 66666 (phone and or email).

Complete assembly of the invitation for bids may be obtained from the Contracting Officer.

Competitive Sealed Bidding Guidelines

Watershed districts may desire to obtain competitive bids when making a purchase, obtaining a service, or contracting for construction. **K.S.A. 75-3739** outlines competitive bid procedures for state agencies that does not include political subdivisions such as organized watershed districts. However, the general guidelines are provided here to assist a district in conducting equitable and competitive bidding.

1. The provisions of this procedure apply to every competitive sealed bidding.
2. The Invitation for Bids
 - a. Use: The Invitation for Bids is used to initiate a competitive sealed bid.
 - b. Content: The Invitation for Bids shall include the following:
 - Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the district, and any other special information.
 - The project description, evaluation factors, performance schedule, and such inspection and acceptance requirements as are not included in the purchase description.
 - The contract terms and conditions, including bonding or other security requirements, as applicable.
 - c. Incorporation by Reference: The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.
 - d. Acknowledgement of Amendments: The Invitation for Bids shall require the acknowledgement of the receipt of all amendments issued.
 - e. Bidding Time: Bidding time is the period of time between the date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of three days shall be provided.
3. Bidder Submissions
 - a. Bid Form: The Bid Schedule is a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions, **as per the following** sample “Bid Schedule”.

SAMPLE

BID SCHEDULE

HAPPY WATERSHED, SITE NO. 3-4A

ITEM #	WORK OR MATERIAL	SPEC. #	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1.	Seeding, Mulching & Fertilizer	6	10.7	Ac.	\$ _____ \$ _____	
2.	Mobilization	8	Lump Sum		\$ _____ \$ _____	
3.	Water	10	1300	M. Gal.	\$ _____ \$ _____	
4.	Excavation, Common	21	10,450	Cu. Yds.	\$ _____ \$ _____	
5.	Earthfill, Embankment	23	69,500	Cu. Yds.	\$ _____ \$ _____	
6.	Earthfill, Hand Compacted	23	Lump Sum		\$ _____ \$ _____	
7.	Earthfill, Misc.	23	Lump Sum		\$ _____ \$ _____	
8.	Earthfill, Random	23	8,354	Cu. Yds.	\$ _____ \$ _____	
9.	Drainfill	24	25	Cu. Yds.	\$ _____ \$ _____	
10.	Reinforced Concrete (Class 4000)	31	15.7	Cu. Yds.	\$ _____ \$ _____	
11.	Steel Reinforcement	34	500	Lbs.	\$ _____ \$ _____	
12.	Reinforced Concrete Pipe, 24" Diameter	41	184	LF	\$ _____ \$ _____	
13.	Reinforced Concrete Pipe (Riser, 36" Diameter, W/Tees)		41	Lump Sum	\$ _____ \$ _____	
14.	CMP, 12" Diameter	44	42	LF	\$ _____ \$ _____	
15.	Trash Rack	81	Lump Sum		\$ _____ \$ _____	
16.	Special Area Fences (Smooth Wire)	92	5,000	LF	\$ _____ \$ _____	
17.	Knife Gate Valve, 10" Diameter	208	Lump Sum		\$ _____ \$ _____	
18.	Rock Riprap Around Inlet	212B	11	Tons	\$ _____ \$ _____	
19.	Plastic Drainage Pipe, 4" Diameter	220	74	LF	\$ _____ \$ _____	
20.	Corrugated Metal Pipe, 36" Diameter	56	51	LF	\$ _____ \$ _____	
Total Bid					\$ _____	

Contractor _____
Signature

Competitive Sealed Bidding Guidelines (continued)

4. Public Notice

- a. Distribution: Invitation for Bids or Notices of the availability of Invitations for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall indicate where, when and for how long Invitations for Bids may be obtained, generally describe the supply, service, or construction desired, and may contain other appropriate information. Where appropriate, the Contracting Officer may require payment of a fee or a deposit for the supplying of the specifications and plans.
- b. Publication: Every project in excess of \$50,000 shall be publicized in the Kansas Register and may be publicized in:
 - A newspaper of general circulation;
 - A newspaper of local circulation in the area pertinent to the project; or
 - Industry media.
- c. Public Availability: A copy of the Invitation for Bids shall be made available for public inspection in the district office or other designated location.

5. Bidder List

- a. Purpose: Bidders lists may be compiled to provide the district with the names of contractors that may be interested in competing for district contracts. Unless otherwise provided, inclusion or exclusion of the name of a contractor does not indicate whether the contractor is responsible in respect to a particular project or otherwise capable of successfully performing a district contract.
- b. Deletion of Bidders: Contractors that fail to respond to Invitations for Bids or Notices of Availability on three consecutive competitive bids may be removed from the applicable bidders list after notice to the bidder. Prospective bidders currently meeting the criteria for inclusion on the list may be reinstated on such lists at their request.
- c. Public Availability: Names and addresses on the master bidders list shall be available for public inspection provided the list shall not be used for private promotional, commercial or marketing purposes.
- d. Pre-Bid Conferences: Pre-bid conferences may be conducted to explain the project requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. If a transcript is made it shall be a public record.

6. Amendments to Invitation for Bids

- a. Form: Amendments to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the Invitation for Bids it amends.
- b. Distribution: Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.
- c. Timeliness: Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible in the amendment or, if necessary, by email or telephone and confirmed in the amendment.

7. Pre-Opening Modification or Withdrawal of Bids

- a. Procedure: Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.
- b. Disposition of Bid Security: If a bid is withdrawn, the bid security shall be returned to the bidder.
- c. Records: All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate file.

8. Late Bids, Late Withdrawals and Late Modifications

- a. Definition: Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after the time and date set for opening of bids at the place designated for opening is late.
- b. Treatment: No late bid, late modification, or late withdrawal will be considered unless the bid, modification or withdrawal would have been timely but for the action or inaction of district personnel directly serving the bid activity.
- c. Notice: Bidders submitting late bids that will not be considered for award shall be so notified as soon as practicable. Late bids will be returned unopened to the bidder.
- d. Records: Records shall be made and kept for each late bid, late modification or late withdrawal.

9. Receipt, Opening and Recording of Bids

- a. Receipt: Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid openings.

- b. Opening and Recording: Bids and modification shall be opened publicly at the time, date and place designated in the Invitation for Bids. The name of each bidder, the bid price and such other information as is deemed appropriate by the Contracting Officer, shall be read aloud or otherwise made available. Such information also shall be recorded at the time of bid opening, that is, the bids shall be tabulated or a bid abstract shall be made.

10. Mistakes in Bids

- a. General: Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the district or the fair treatment of other bidders.
- b. Mistakes Discovered Before Opening: A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid.
- c. Confirmation of Bids: When the Contracting Officer knows or has reason to conclude that a mistake has been made, such officer should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in the next paragraph are met.
- d. Mistakes Discovered After Opening but Before Award: This subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.
 - Minor Information: Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders - that is, the effect on price, quality, quantity, delivery or contractual conditions is negligible. The Contracting Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State of Kansas. Examples include the failure of a bidder to 1) return the number of signed bids required by the Invitation of Bids; and 2) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound. Acknowledge receipt of an amendment to the Invitation for Bids, but only if:
 - It is clear from the bid that the bidder received the amendment and intended to be bound by its terms.
 - The amendment involved had a negligible effect.
 - Mistakes Where Intended Correct Bid Is Evident: If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of the mistakes that may be clearly evident on the face of the bid document are

typographical errors, errors in extending unit prices, transposition errors and arithmetical errors.

- **Mistakes Where Intended Correct Bid Is Not Evident:** A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident. The bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- e. **Mistakes Discovered After Award:** Mistakes shall not be corrected after award of the contract except where the board makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

11. Bid Evaluation and Award

- a. **General:** The contract is to be awarded “to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids”. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.
- b. **Responsibility and Responsiveness:** A “responsive bidder” is “a person who has submitted a bid which conforms in all material respects to the Invitation for Bids”.

12. Determination of Lowest Bidder

- a. Bids will be evaluated to determine which bidder offers the lowest cost to the district in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder.
- b. Nothing in this section shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if such bidder is not also the lowest bidder. Further, this section does not permit negotiations with any bidder.
- c. Following award, a record showing the basis for determining the successful bidder shall be made a part of the project file **as per the following** sample “Bid Summary” at the end of this section.
- d. Written notice of award shall be sent to the successful bidder as **per the following** sample “Notice of Award of Bid” at the end of this section.

SAMPLE

NOTICE OF AWARD OF BID

TO: _____

PROJECT DESCRIPTION: _____

The District has considered the Bid submitted by you for the above described Work in response to its Advertisement for Bids dated _____, 20_____, and Information for Bidders.

You are hereby notified that your Bid has been accepted for items in the amount of \$ _____. You are required by the Information for Bidders to execute the Agreement and furnish the required Contractor's Performance Bond, Payment Bond and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within ten (10) days from the date of this Notice, said district will be entitled to consider all your rights arising out of the district's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The district will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the district.

Dated this _____ day of _____, 20_____.

District: _____

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged

By _____,

This the _____ day of _____, 20_____.

By: _____

Title: _____

Public Works Bond and Performance Bond

1. **Public Works Bond - K.S.A. 60-1111** (see sample “Public Works Bond” following this section):

- a. Required when public official enters into contract exceeding \$100,000, except as explained in paragraph 3 below.
- b. Bond shall be for an amount not less than the total of the contract.
- c. Assures that all indebtedness incurred for labor furnished, materials, equipment or supplies used or consumed in performance of contract is paid by contractor, subcontractor or by the public work bond.
- d. Secured by the contractor from a surety company.
- e. The bond shall be approved by and filed with the Clerk of the District Court of the county in which work is to be done.

2. **Performance Bond** (see sample “Performance Bond” following this section):

- a. Required when public official enters into contract exceeding \$50,000 except as explained in paragraph three (3) below.
- b. Bond shall be for an amount not less than the total of the contract.
- c. Assures that all conditions of the contract are fulfilled. If the contractor is in default, the surety will remedy the default by completion of the contract.
- d. Secured by the contractor from a surety company.

3. **Alternative for Bonds - K.S.A. 60-1112**

- a. The district may accept a certificate of deposit payable to the district in lieu of a public works bond or performance bond.
 - Each certificate of deposit shall be in an amount not less than the contract price.
 - Each certificate of deposit shall be subject to forfeiture to the district.
 - Each certificate of deposit shall be in a form and under such other conditions as may be applicable and prescribed by the district. (A written agreement is necessary.)
- b. Each certificate of deposit shall be retained by the district for at least six months after the final acceptance of the construction.
 - At the end of period, the certificate of deposit may be returned back to the vendor if there are no claims under the contract.
 - All interest accruing shall belong to the vendor unless the certificate is forfeited.

- The district shall determine the amount of money needed to satisfy claims for breach of performance or claims for payment of labor, materials, equipment or supplies.

4. **Bond Authenticity:** Division of Purchases Informational Circular:

- a. The Kansas Insurance department has advised the Division of Purchases that there are an ever-increasing number of instances where counterfeit, forged or fraudulent bonds are being issued and presented as legitimate instruments.
- b. Each district is advised to take steps to confirm that the bonds are legitimate instruments.
- c. To secure additional information and instructions for determining bond authenticity contact: 785-296-7845 at the Kansas Insurance Department.

SAMPLE

PUBLIC WORKS BOND

PAYMENT BOND

(See Instruction on reverse)

DATE BOND EXECUTED

(Must be same or later than date of contract)

Principal (Legal Name & Business Address)
Surety (ies) Name (s) & business address(es)

Type of Organization (X one)			
<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation			
State of Incorporation			
Penal Sum of Bond			
Million(s)	Thousand(s)	Hundred(s)	Cents
Contract Date		Contract No.	

KNOW ALL MEN BY THESE PRESENTS, That we , the Principal and Surety(ies) hereto, are firmly bound to the _____, hereinafter called
 (Name of Contracting Local Organization)

the Contracting Local Organization, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above;

NOW, THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety (ies) being hereby waived, than the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety (ies) have executed this payment bond and have affixed their seals on the date set forth above.

				Principal			
	Signature (s)	1.		2.			
			(seal)			(seal)	
	Name (s) & Title(s) (Typed)	1.		2.			
				Corporate Surety (ies)			
	Name & Address			State of Inc.		Liability Limit	
SURETY A	Signature(s)	1.		2.			
	Names (s) & Title(s) Typed)	1.	(seal)	2.		(seal)	

Corporate Surety (ies)

	Name & Address		State of Inc.		Liability Limit
SURETY B	Signature (s)	1.		2.	
	(seal)				(seal)
SURETY C	Names (s) & Title (s) (Typed)	1.		2.	
	Name & Address		State of Inc.		Liability Limit
SURETY D	Signature (s)	1.		2.	
	(seal)				(seal)
SURETY E	Names (s) & Title (s) (Typed)	1.		2.	
	Name & Address		State of Inc.		Liability Limit
SURETY F	Signature (s)	1.		2.	
	(seal)				(seal)
SURETY G	Names (s) & Title (s) (Typed)	1.		2.	
	Name & Address		State of Inc.		Liability Limit

INSTRUCTIONS

1. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
2. The name of each person signing this payment bond should be typed in the space provided.
3. The person signing the bond for the surety must submit evidence of his authority to act for the surety.
4. The corporate surety must be approved by the state in which the services or supplies are to be delivered or on which construction is to be performed.

SAMPLE

PERFORMANCE BOND

PERFORMANCE BOND

(See Instruction on reverse)

DATE BOND EXECUTED

(Must be same or later than date of contract)

Principal (Legal Name & Business Address)	Type of Organization (X one) <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation State of Incorporation								
Surety (ies) Name (s) & business address(es)	Penal Sum of Bond								
	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 25%; padding: 2px;">Million(s)</td><td style="width: 25%; padding: 2px;">Thousand(s)</td><td style="width: 25%; padding: 2px;">Hundred(s)</td><td style="width: 25%; padding: 2px;">Cents</td></tr><tr><td style="height: 20px;"></td><td></td><td></td><td></td></tr></table>	Million(s)	Thousand(s)	Hundred(s)	Cents				
Million(s)	Thousand(s)	Hundred(s)	Cents						
	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 70%; padding: 2px;">Contract Date</td><td style="padding: 2px;">Contract No.</td></tr><tr><td style="height: 20px;"></td><td></td></tr></table>	Contract Date	Contract No.						
Contract Date	Contract No.								

KNOW ALL MEN BY THESE PRESENTS, That we , the Principal and Surety(ies) hereto, are firmly bound to the _____, hereinafter called

(Name of Contracting Local Organization)

the Contracting Local Organization, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above;

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Local Organization, with or without notice to the Surety (ies), and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety (ies) being hereby waived, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety (ies) have executed this performance bond and have affixed their seals on the date set forth above.

Principal

Signature (s)	1.		2.	
		(seal)		(seal)
Name (s) & Title(s) (Typed)s	1.		2.	

Corporate Surety (ies)

	Name & Address		State of Inc.	Liability Limit
SURETY A	Signature (s)	1.	2.	
			(seal)	(seal)
	Names (s) & Title (s) (Typed)	1.	2.	
	Name & Address		State of Inc.	Liability Limit
SURETY B	Signature (s)	1.	2.	
			(seal)	(seal)
	Names (s) & Title (s) (Typed)	1.	2.	
	Name & Address		State of Inc.	Liability Limit
SURETY C	Signature (s)	1.	2.	
			(seal)	(seal)
	Names (s) & Title (s) (Typed)	1.	2.	
	Name & Address		State of Inc	Liability Limit
SURETY D	Signature (s)	1.	2.	
			(seal)	(seal)
	Names (s) & Title (s) (Typed)	1.	2.	
	Name & Address		State of Inc	Liability Limit
SURETY E	Signature (s)	1.	2	
			(seal)	(seal)
	Names (s) & Title (s) (Typed)	1.	2.	

INSTRUCTIONS

1. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
2. The name of each person signing this payment bond should be typed in the space provided.
3. The person signing the bond for the surety must submit evidence of his authority to act for the surety.
4. The corporate surety must be approved by the state in which the services or supplies are to be delivered or on which construction is to be performed.

Dam Construction Contract

A dam construction contract shall be reviewed by the watershed district and/or its engineer for completeness and accuracy before signing. The following document is offered as a guide for creating a dam construction contract (see sample “Construction Contract”).

SAMPLE

CONSTRUCTION CONTRACT

_____ DISTRICT NO. _____ SITE NO. _____

This Contract, made this _____ day of _____, 20_____,
_____, Kansas _____, hereinafter called "DISTRICT, and
_____ of _____, Kansas
_____, hereinafter called "CONTRACTOR", agree as follows:

1. PURPOSE

This contract is entered into for the purpose of setting forth the required performance of each party for construction of a flood water detention / grade stabilization structure, hereinafter, called "THE PROJECT".

2. LOCATION OF THE PROJECT

THE PROJECT shall be located on real property described as follows:

Site Number _____

Legal Description _____

In _____ County, Kansas

3. CONTRACT PRICE

In full consideration of the work and services to be performed and provided by the CONTRACTOR and subject to such conditions as set forth herein, the DISTRICT agrees to pay the CONTRACTOR the sum of \$ _____, the amount set forth in the bid schedule submitted by the CONTRACTOR, a copy of said bid schedule being attached hereto and made a part of this contract.

4. COVEVANTS OF CONTRACTOR

The Contractor agrees and covenants that the:

- a. Contractor had full and ample opportunity to review specifications, the bid schedule, drawings and other related documents, so that the nature of the work to be undertaken by the Contractor has been fully disclosed to them.
- b. Documents or plans identified in subpart a above shall become and hereby made a part of this contract.
- c. Contractor shall:

- Furnish all tools, equipment, supplies, superintendence, transportation and other construction accessories, services and facilities.
- Furnish all materials, supplies and equipment specified to be incorporated into and form a permanent part of the complete work.
- Provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the contract documents.
- Execute, construct and complete all work included in and covered by the District's award of this contract to the Contractor, such award being based on the acceptance by the District of Contractor's bid.

d. Contractor shall have in force, during the full term of the contract, adequate Workman's Compensation Insurance, Public Liability Insurance and Property Damage Insurance. Certificate of Insurance shall be provided to the District.

e. Contractor shall furnish to the District a Performance Bond in penal sums of not less than one hundred percent (100%) of the original amount of the contract and a Public Works Bond (Payment Bond) in penal sums of not less than one hundred percent (100%) of the original amount of the contract.

f. Contractor occupies the position of independent contractor for all purposes hereunder.

g. Contractor shall fully execute this contract within ten (10) days of offering contract, and to return signed contract to the District.

5. Covenants of District

The District agrees that the:

a. District shall make monthly estimates of work completed and material on site and will tender payments of up to _____ percent of such completed monthly work, as requested by the Contractor. The remaining contract price will be paid to the Contractor after acceptance of the completed structure by the District and upon satisfactory assurance that all Contractor bills related to THE PROJECT have been paid.

b. Engineer of the District shall inspect THE PROJECT site and notify the Contractor of any deficiencies in performance.

c. Contracting Officer shall provide Notice to Proceed and shall perform timely visits to the project during construction.

6. Start of Construction

Construction is to begin on THE PROJECT no later than _____
 (_____ days after NOTICE TO PROCEED) and all such work shall be completed in
 _____ calendar days after "Notice to Proceed".

7. Penalty

- a. Failure to complete THE PROJECT within the time limits set forth in this agreement will result in assessed liquidated damages against the Contractor at the rate of \$ _____ per day for each day THE PROJECT remains incomplete.
- b. The District’s Contracting Officer may extend the work period through the use of written “stop” and “resume” orders for such times as considered unfavorable for proper working conditions and through the use of written and approved “change orders”.

8. Amendments

Any changes or amendments to this contract, including the documents made part of this contract, shall be in writing and signed by both parties to be considered effective.

9. Contract Documents

- Invitation for Bids.
- Bid Schedule.
- Instruction to Bidders.
- General Provisions of the Construction Contract.
- Special Provisions of the Construction Contract.
- Blueprints, Plans and Specifications.
- Performance Bond satisfactory to District.
- Public Works Bond (Payment Bond) as required by K.S.A. 60-1111.
- This Contract.

All the terms and conditions of this contract shall be binding on the District and Contractor, and the irrespective heirs, legal and personal representative, successors and assigns.

District:

Contractor:

District Number: _____

Company Name

President

Address

Secretary

City, State

Zip

Signature

Title

Permits Conditions

1. Water Structures

The permit to construct this structure issued by the Division of Water Resources Kansas Department of Agriculture requires that DWR be notified well in advance of:

- a. Proposed time of commencement of work.
- b. Placement of any material on any portion of the foundation until such portion of the foundations has been approved by a representative of the DWR.
- c. Installation of the principal spillway pipe, appurtenances to the principal spillway, and fill material around the pipe in order that it may be inspected by a representative of the DWR.
- d. Therefore, it is a requirement provision of this contract that the contractor will notify the engineer well in advance of the actions in lines a, b and c above so that these requirements set forth by the DWR can be met and to avoid construction delays. Construction in these particular areas will cease until the above mentioned DWR requirements are met.

Any eventual difficulty or loss of time caused by the contractor failing to meet the above requirements shall be borne solely by the contractor.

2. Water Appropriation

On construction jobs where:

- a. significant watering of the embankment may be required, or
- b. significant dewatering of the core trench is anticipated,

a permit for beneficial use of water from The Division of Water Resources may be required. In such cases, it is recommended that the Contracting Officer / District Manager from the watershed district contact the Water Appropriation Section for the appropriate permit application forms.

For water for the construction of the embankment, the most likely type of water right to be utilized is a term permit. Term permits can be issued for a rate and a quantity of water reasonable for an intended use and can be utilized for an approvable term of up to five years (check with the Division of Water Resources, for updated requirements).

Cash Basis Law

The state needs to ascertain that the district has sufficient funds to cover its financial obligation to finish the construction / rehabilitation of the site in question. The district treasurer should certify that the district has enough money to supplement the state cost-share assistance. The following “Cash Basis Law” form shall be utilized through this process.



CASH BASIS LAW

A requirement of the contract between the State and District is the certification by the district of compliance with the Kansas Cash Basis Law. Please use the following format to certify compliance to the Division of Conservation.

_____ Date

To: Division of Conservation
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502

I hereby certify that _____ District No. _____ is in full compliance with the Cash Basis Law (K.S.A. 10-1101 *et seq.*).

Total Balance in the District Treasury

on date of signing construction contract \$ _____

Amount allocated for Site No. _____ \$ _____

Signed _____, Treasurer

_____ District No. _____

Sales Tax Exemption (K.S.A. 79-3606)

1. All purchases of tangible personal property or services by a contractor for a district project are exempt from state sales tax, provided:
 - a. The district obtains from the state an exemption certification.
 - b. Furnishes a copy to the contractor:
 - The contractor shall furnish a copy of the certificate to all suppliers from whom purchases are made.
 - Upon completion of the project, the contractor shall submit a sworn statement, on a form provided by the Director of Taxation, that all purchases made were entitled to sales tax exemption.
2. “Request for Project Exemption Certificate” form No. PR-76, may be obtained by calling or writing the Kansas Department of Revenue in Topeka, Kansas.

Pre-Construction Conference Guidelines

1. The pre-construction conference is an organizational meeting of the:
 - Contractor
 - District Contracting Officer / Manager
 - Engineer
 - Landowner(s)*
 - District Board Member(s)*
 - Representative of Division of Water Resources*
 - Representative of the Division of Conservation*

*If available to attend.
2. Items to be covered at a pre-construction conference should include but not be limited to (see **following** sample “Pre-Construction Conference”):
 - Contractual Requirements
 - Performance Bond / Payment Bond
 - Liability Insurance by the Contractor
 - Compliance Documentation
 - Building Permit(s)
 - Special Permits-Water Rights, etc.
 - Job Schedule
 - Payment Schedule or Procedure
 - Materials Submission Plan
 - Ingress and Egress
 - Storage Area

SAMPLE

PRE-CONSTRUCTION CONFERENCE

HAPPY CREEK WATERSHED JOINT DISTRICT NO. # 146

Site _____

Date _____

Contractor: _____

Superintendent: _____

Dirt Foreman: _____

Concrete Foreman: _____

Sub-Contractor: _____

Foreman: _____

Hospital: _____

Doctor: _____

Happy Creek Watershed Joint District No. # # _____

Contracting Officer: _____

Inspector: _____

Notice to Proceed

The contractor shall be issued a Notice to Proceed indicating the time to begin and the time to complete the construction work (see following sample of “Notice to Proceed”).

SAMPLE

NOTICE TO PROCEED

To: _____ Date: _____

Project: _____

You are hereby notified to commence work in accordance with the Agreement dated _____, 20_____, on or before _____, 20_____, and you are to complete the work within _____ consecutive calendar days thereafter. The date of completion of all work is therefore _____, 20_____.

District

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged by _____

_____,
this the _____ day
of _____, 20_____

By _____
Title _____

cc: Division of Conservation
Division of Water Resources

Application for State Cost-Share Assistance Watershed Dam Construction

Instructions for New Construction Applications

The following instruction will assist in the completion of the application form found in the Watershed District Handbook. All forms may be copied but please use one side of paper only.

A. Contractor Payment Estimate

Section 1. Name of district and address where all correspondence pertaining to the contract is to be mailed

Section 2. Project site number, numerical sequence of estimates and date of estimate

Section 3. Full name and address of contractor

Section 4. Line 4a is the amount of the contract with the contractor.

Line 4a (1) and (2) are revisions due to contract change order.

Line 4b is the adjusted contract based upon approved change orders. Include a copy of approved change orders.

Section 5. Complete each line item for “This Period” and “To Date”. This section is for payment due to the contractor. Include a copy of the progress report.

Section 6. Certification of the Engineer and Contracting Officer / Manager

Section 7. Certification of contractors.

Section 8. Release of claims by contractors.

B. Fencing and Seeding Contract

Use this section when the fencing and seeding is separate from the construction contract. Include a copy of the contract for fencing and seeding. The total costs for a separate contract for fencing and seeding are also entered on Part 4, line B2.

C. Engineering Services

Complete upon request for final payment of state contract. Total engineering costs are also entered in Part 4, line B4.

D. Request for State Reimbursement

- Partial payment - complete Section A.
- Final payment - complete Section B and C.

Note: Submit Part 1 with all requests for Reimbursement.

Certification - Contracting Officer / Manager signs and dates request.



**Application for State Cost-Share Assistance
Watershed Dam Construction / Rehabilitation**

Request for Payment

**PART I - CONTRACTOR PAYMENT ESTIMATE.
Submit Part I with all Requests for Reimbursement.**

1. <u>NAME & ADDRESS OF DISTRICT</u> 	2. SITE NO. _____ ESTIMATE NO. _____ DATE _____	3. <u>NAME & ADDRESS OF CONTRACTOR</u>
4. <u>CONSTRUCTION WORKSHEET:</u> (Attach Progress Report & Change Order) a. Original approved construction contract amount \$ _____ (1) PLUS: Revisions due to contract change order _____ (2) LESS: Revisions due to contract change order _____ b. Adjusted construction contract amount to date \$ _____		
5. <u>ANALYSIS OF WORK PERFORMED AND AMOUNT EARNED:</u> a. Original contract work completed \$ b. Change order work completed \$ c. Total cost of work completed \$ (1) LESS: Retained percentage (<u>10</u> %) \$ d. Net amount earned on contract work \$ (1) LESS: Previous payments to contractor \$ e. BALANCE DUE CONTRACTOR THIS PAYMENT \$	<u>THIS PERIOD</u>	<u>TO DATE</u>
6. <u>ENGINEER CERTIFICATION:</u> I hereby certify that I have inspected the above work, that to the best of my knowledge it is in accord with contract requirements, that the estimated quantities are correct, and that work herein for the period from _____ to _____ has not been reported on any previous estimate. SIGNATURE: _____ DATE: _____ ENGINEER SIGNATURE: _____ DATE: _____ CONTRACTING OFFICER / MANAGER		
7. <u>CONTRACTOR CERTIFICATION:</u> I hereby certify I have performed the work designated on this report and request payment accordingly. CONSTRUCTION CONTRACTOR SIGNATURE: _____ DATE: _____ SEEDING AND/OR FENCING CONTRACTOR SIGNATURE: _____ DATE: _____		

8. RELEASE OF CLAIMS (TO BE COMPLETED UPON COMPLETION AND ACCEPTANCE OF THE STRUCTURE):

I, _____ do hereby release the
(CONSTRUCTION CONTRACTOR) (SEEDING & FENCING CONTRACTOR) (DISTRICT)
_____ from any and all claims of any character whatsoever arising under and by virtue of Construction
Contract dated _____, as amended, except as herein stated,
and/or Seeding and Fencing Contract dated _____.

CONTRACTOR SIGNATURE: _____ DATE: _____ SEEDING AND/OR FENCING
CONTRACTOR SIGNATURE: _____ DATE: _____

PART II - FENCING & SEEDING CONTRACT, IF SEPARATE CONTRACT: (Final payment only)			
Item	Quantity	Unit Price	Costs
TOTAL FENCING & SEEDING COSTS \$ _____			
PART III - ENGINEERING SERVICES: (Final payment only) Itemized services performed:			
Services Performed	Costs		
TOTAL ENGINEERING COSTS \$ _____			
PART IV - REQUEST FOR STATE REIMBURSEMENT: Complete section A or B and C.			
A. REQUEST FOR PARTIAL PAYMENT			
1. Construction contract completed to date (Part I, 5c)			
2. Partial payment cost-share rate - 65%		x 65	
3. Cost-share earned		\$	
4. LESS partial payments received from the State		\$	
5. TOTAL PARTIAL PAYMENT REQUESTED (Not to exceed 95% of the State approved contract)		\$	
B. SUMMARY OF FINAL COSTS - Construction completed on			
1. Final construction contract costs (Part I, 5c)		\$	
2. Final fencing and seeding costs (if separate Part II)		\$	
3. Total construction costs (Line 1 plus 2)		\$	
4. Total engineering costs (Part III)		\$	
C. REQUEST FOR FINAL PAYMENT			
1. Total construction costs		\$	
2. State cost-share rate - 70%		x 70	
3. Cost-share earned for construction		\$	
4. Actual engineering, geologic investigations, and inspection costs or 10% of total construction costs		\$	
5. Cost-share subtotal (Line 3 plus 4)		\$	
6. Approved state contract		\$	
7. Partial payments submitted and/or received		\$	
8. TOTAL REQUESTED AS FINAL PAYMENT (Subtract line 7 from smaller of line 5 or 6)		\$	
CERTIFICATION: I hereby certify that to the best of my knowledge the above is correct.			
SIGNATURE: _____		DATE: _____	
CONTRACTING OFFICER / MANAGER _____			

State Assistance in Watershed Dam Construction / Rehabilitation

Instructions for Construction Progress Report

1. Part I:

Section 1. Site number

Section 2. Date and number of estimates

Section 3. Name of watershed district

Section 4: Item number from bid schedule.

Section 5: From Bid schedule.

Section 6: Completed during period as indicated for each item.

Section 7: Total completed to date.

Section 8: Total of cost columns only.

2. Part II: Construction Progress Report-Change Order

A summary of the change orders: Complete all information as requested, using information from Change Order, Form 7.



State Assistance in Watershed Dam Construction / Rehabilitation

Construction Progress Report

PART I: Complete when submitting request for payment.

1. Site No.		2. Estimate No.:		3. Name of District:		
		Date:				
4. Item No.	5. Original or Requested Quantity and Unit:	6. Completed this period:			7. Completed to Date:	
		From	To	From	To	
		Quantity	Unit Price	Unit Cost	Total Quantity	Total Amount
			\$	\$		\$
8. Total of Cost Columns:				\$		\$

PART II: Complete only if a Change Order (Form 7) has been made and a copy is attached.

construction progress report - change order				
1. Contract change order	2. Description	3. Additional to original contract price		4. Deductions from contract price as shown on change orders
No. Date		Total cost of items added by change order	Cost of change order items completed to date	
		\$	\$	\$
5. Totals:		\$	\$	\$

Instructions for Change Order

This form is to be completed for all changes in quantity, items, etc. from the accepted bid. The form is self-explanatory. Be aware that some changes may require revised plans and prior approval by the Division of Water Resources, Kansas Department of Agriculture.



State Assistance in Watershed Dam Construction / Rehabilitation
Change Order

SITE NO.:

DISTRICT:

TO (CONTRACTOR):

ADDRESS:

YOU ARE HEREBY REQUESTED TO COMPLY WITH THE FOLLOWING:

Item No.	Applicable General Provision	Change	Increase in Contract Cost	Decrease in Contract Cost
			\$	\$
		TOTAL	\$	\$

Net: (INCREASE) (DECREASE) In Contract Cost \$

The Completion Date of the Contract is: (not changed) (extended) (reduced) by _____ calendar days.

Revised Completion Date:

List of Attachments: (If none, so state)

Original Contract Price: \$ _____ Revised Contract Price: \$ _____

THIS MODIFICATION IS HEREBY MADE A PART OF THE CONTRACT:

SIGNED: _____ ACCEPTED: _____
CONTRACTING OFFICER CONTRACTOR

DATE: _____ DATE: _____

Some changes may require revised plans and prior approval by DWR.

Dam Inspection Report

Annual Operation and Maintenance Inspection (O & M) is required for every flood control structure. Each watershed district must conduct annual O & M inspections and submit the Dam Inspection Reports to the DOC and NRCS as per the distribution list on page two of the O & M form.

Dam Inspection Report

State of Kansas

(Meets Kansas Department of Agriculture – Division of Conservation Requirements)

**Rev.
12/15**

Watershed or Project Name _____

Dam Name and Number _____

Field Office _____

Inspection Date _____ Date of Last Inspection _____

Type of Inspection (Check One) Annual Operation and Maintenance (O&M) ___ Special ___ Informal Surveillance _____

- Condition: 1. Adequate-No maintenance required 2. Potential Problem-Monitor
 3. Deficient-Future repairs required 4. Deficient-Immediate repairs required

Item ¹	Condition	Needed Maintenance and Repairs/Remarks ²		Estimated Completion Date
Embankment-Upstream Slope (1)				
Embankment-Top and Downstream Slope (1)				
Slope Protection – Riprap, Sand, or Vegetated Slope (2)				
Auxiliary Spillway (3)				
Principal Spillway-Inlet, Riser and Trash Rack (4)				
Principal Spillway-Valve and Drawdown Works (4)				
Principal Spillway-Outlet Section and Pipe Support (4)				
Principal Spillway – Seepage along Pipe		Yes	No	
		Describe the flow:		
The SStilling Basin and Outlet Channel (5)				
Pipe Drain Outlets (6)				
Livestock Exclusion Barriers – Rock or Otherwise (7)				
Fences (8)				
Downstream Improvements (9)				
		Drain flowing:	Yes No	
		Describe the flow:		

NRCS Representative (s) (if applicable) _____ Date _____ District Representative _____ Date _____

1. Refer to the Inspection Checklist on Page 2.
2. Record additional notes / remarks on a separate sheet and attach.
3. Discuss with District Board as necessary, Note:

Note: Distribution Instructions are on Page 2.

Distribution Instructions

For **federally-funded dams** assisted by the Natural Resources Conservation Service (NRCS), distribute this sheet as follows:

1. Original to NRCS for the following distribution:
 - a. Original to District Conservationist for O&M file (for permanent retention) - See General Manual Title 120, Section 408.60 - File Code 210-28, Item 12.
 - b. Copy to Assistant State Conservationist for field operations - For disposition, see General Manual Title 120, Section 408.60 - File Code 210-28, Item 12.
 - c. Copy to office assistant for engineering section – State office.
2. Copy to Hakim Saadi, Watershed Program Manager, Kansas Department of Agriculture, Division of Conservation, 1320 Research Park Drive, Manhattan, Kansas, 66502, or by e-mail hakim.saadi@ks.gov or kda.wd.om@ks.gov.
3. Copy to Watershed District.

For **state or locally funded dams** assisted by the Kansas Department of Agriculture, Division of Conservation, distribute this sheet as follows:

1. Copy to Hakim Saadi, Watershed Program Manager, Kansas Department of Agriculture, Division of Conservation, 1320 Research Park Drive, Manhattan, Kansas, 66502, or by e-mail hakim.saadi@ks.gov or kda.wd.om@ks.gov.
2. Copy to Watershed District.

Inspection Checklist

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Embankment (Upstream Slope, Top Slope, Downstream Slope) <ul style="list-style-type: none"> • Damage to embankment by waves, erosion, rodents, livestock, or vehicles (if $\leq 1'$ parallel to CL, <i>Condition 2</i>) • Sloughing, sliding or slumping of fill (<i>Condition 3</i>) • Seepage, boils or wet areas at abutments or along downstream toe (<i>Condition 3</i>) • Cracking and displacement of fill (<i>Condition 3</i>) • Observable settlement of fill (<i>Condition 3</i>) • Presence of trees or shrubs (trees $< 3'$ tall, <i>Condition 2</i>) • Adequacy of grass vegetation ($< xx\%$ cover, <i>Condition 3</i>) 2. Slope Protection (Riprap, Sand or Vegetated Slope, <i>Condition 2</i>) <ul style="list-style-type: none"> • Presence of trash, logs and limbs • Displacement or excessive breakdown of riprap or other materials • Condition of water-tolerant vegetation 3. Auxiliary Spillway (Upstream of level section, <i>Condition 2</i>) <ul style="list-style-type: none"> • Adequacy of grass vegetation • Sloughing, sliding or erosion of slopes • Damage by livestock, vehicles or poor drainage • Erosion of bottom and exit channel • Obstructions by woody plants or fences 4. Principal Spillway (Riser and Inlet, Valve and Drawdown Works, and Pipe) <ul style="list-style-type: none"> • Damage, obstruction or corrosion of trash rack ($> 50\%$ obstruction, <i>Condition 3</i>) • Obstruction to barrel entrance (<i>Condition 3</i>) • Damage or corrosion of ladder (<i>Condition 2</i>) • Observable horizontal or vertical misalignment of pipe (<i>Condition 3</i>) • Condition of concrete (Significant deterioration, <i>Cond 3</i>) | <ul style="list-style-type: none"> • Damage, corrosion or leakage of drawdown works (<i>Condition 2</i>) • Leaky pipe joints and joint number (<i>Condition 3</i>) <ol style="list-style-type: none"> 5. Stilling Basin and Outlet Channel (<i>Condition 2</i>) <ul style="list-style-type: none"> • Slumping or sliding of slopes • Displacement or excessive breakdown of riprap materials • Erosion or siltation of outlet channel • Seepage or surface runoff into basin • Excessive vegetation in outlet channel • Pipe support 6. Pipe Drain Outlet(s) (<i>Condition 2</i>) <ul style="list-style-type: none"> • Obstructions at outlet • Condition of rodent guard • Pipe damage 7. Livestock Exclusion Barriers (<i>Condition 2</i>) <ul style="list-style-type: none"> • Displacement or excessive breakdown of rock materials • Damage deterioration of cattle panels, concrete barriers, etc. 8. Fences (<i>Condition 2</i>) <ul style="list-style-type: none"> • Gates - open or closed • Posts - loose, bent, or broken • Tension and condition of wires • Trash on fence 9. Downstream Improvements
Any new houses, road, utilities, etc., downstream that will affect the dam classification |
|---|---|

Compensatory Mitigation Easement Third-Party Easement Holder

Third-Party Easement Holder Process:

1. District/consultant submits application for 404-permit, then:
 - a) Consultant drafts and develops the compensatory Mitigation Plans, per the KSMG, specifically Permittee - Responsible Mitigation, as required by the US Army Corps of Engineers (Corps).
 - b) Mitigation Plans are submitted, reviewed and approved by the Corps, pending acquiring the Third-Party Easement Holder.
 - c) District acquires KDA-DOC 3rd Party Easement Holder:
 - 1) KDA-DOC [Grantee] & District [Grantor] sign the MOU (KDA document):
The Duly authorized representative of the Grantee: KDA-DOC Executive Director
The Duly authorized representative of the Grantor: Watershed President.
Notarized Signatures
 - 2) Conservation Easement (Corps document):
The landowner [Grantor] (as per District) and KDA-DOC [Grantee] sign the Conservation Easement.
The Duly authorized representative of the Grantee: KDA Secretary
The Duly authorized representative of the Grantor: Landowner.
Notarized Signatures
The District provides KDA-DOC with retainer amount (\$10,000)
 - 3) District submits Conservation Easement to the Corps for reviews.
 - 4) District records Conservation Easement with the Register of Deeds.
2. District submits to the Corps the signed MOU and the signed Conservation Easement.
3. The Corps approves and issues the 404-permit.
4. District acquires all other necessary permits: DWR permit to construct, NPDES, as needed.
5. District erects flood control dam and mitigation activities / practices as approved by the Corps.
6. District advises KDA-DOC when mitigation works are complete and in place and submits signed MOU and the signed conservation easement to KDA-DOC.

Memorandum of Understanding

The Memorandum of Understanding (MOU) is an agreement between the Watershed District and the Kansas Department of Agriculture – Division of Conservation as a third-party easement holder, stipulating the contractual obligations of the two parties for a dam project that requires a compensation mitigation conservation easement.

Conservation Easement

The Conservation Easement is a U.S. Army Corps of Engineers (USACE) contract between the landowner and the USACE stipulating the contractual obligations of the two parties for a dam project that requires a compensation mitigation conservation easement. Please see the following “Memorandum of Understanding & Conservation Easement” for reference.



State Assistance in Watershed Dam Construction / Rehabilitation

Memorandum of Understanding & Conservation Easement

This Memorandum of Understanding (MOU), is entered into by and between the Kansas Department of Agriculture Division of Conservation (hereinafter referred to as “KDA”) and _____ (hereinafter referred to as “WSD”) effective as of _____, 20__ (the “Effective Date”).

WHEREAS, WSD has developed a plan for a dam project that requires a compensation mitigation conservation easement to be acquired by a third-party easement holder approved by the United States Army Corps of Engineers (hereinafter “USACE”); and

WHEREAS, WSD has identified the conservation easement area and has worked with USACE and the owner of the conservation easement area to achieve approval of a conservation mitigation plan; and

WHEREAS, KDA is willing to serve as third party easement holder of the conservation easement area located in ____ County, to be granted pursuant to a Conservation Easement (the “Conservation Easement”), by _____, as grantor, to KDA, as grantee, which real property (the “Real Property”) will be more particularly described in Exhibit A attached to the Conservation Easement; and

WHEREAS, KDA and WSD desire to set out pre-closing requirements and obligations of the parties prior to execution and recordation of the Conservation Easement; and

WHEREAS, KDA, as third-party easement holder, will have certain duties and obligations of inspection and maintenance of the Real Property during the term of the perpetual Conservation Easement; and

WHEREAS, WSD will benefit from the services provided by KDA as third-party easement holder, and has agreed to pay KDA fees and expenses for such services; and

NOW, THEREFORE, the parties hereto do agree as follows:

1. **CONSERVATION EASEMENT**. The Conservation Easement shall be attached hereto as Exhibit A upon execution and recording and shall be incorporated herein by reference and become a part of this MOU.

2. **TERM.** The term of this MOU shall begin on the Effective Date and run in perpetuity unless and until the Conservation Easement is revoked by the U.S. Army Corps of

Engineers (the “Corps”) pursuant to the terms of the Conservation Easement or is otherwise lawfully terminated.

3. **CLOSING REQUIREMENTS.** WSD has received a copy of the Closing Checklist for Third Party Easement from KDA, and acknowledges KDA’s requirements for closing the Conservation Easement set

forth therein. WSD shall be responsible for all costs and expenses of acquisition of the Conservation Easement, including but not limited to, survey costs, title costs, professional fees, other closing checklist items, and additional closing requirements. Should the parties fail to close the Conservation Easement for any reason, WSD shall reimburse KDA for all costs and expenses associated with its anticipated acquisition of the Conservation Easement.

4. **THIRD PARTY EASEMENT HOLDER.** Upon completion of all closing requirements, as set forth in Paragraph 3 herein, KDA shall accept the Conservation Easement and perform the duties set forth therein as the third-party easement holder.
5. **EASEMENT SERVICES.** KDA and WSD agree that, KDA will perform, or hire the necessary professionals or services providers to perform, all the inspection and maintenance duties required by the Conservation Easement.
6. **COSTS.** For KDA’s agreement to serve as third party easement holder for the Real Property, WSD agrees to reimburse KDA for all costs associated with its performance of duties as a third party easement holder for the Real Property, including but not limited to, costs related to administration, inspection and maintenance of the Conservation Easement, and the costs of any litigation or civil fines or penalties associated with the Conservation Easement.
7. **RETAINER.** WSD shall provide a retainer in the amount of \$_____, to be maintained in the compensatory mitigation fund established in K.S.A. 2-1904(g). Retainer funds are to be used for all costs associated with the performance of duties as a third-party easement holder for the Real Property, including but not limited to, costs related to administration, inspection and maintenance of the Conservation Easement, costs of any litigation or civil fines or penalties associated with the Conservation Easement, and any emergency service payments. Upon the request of KDA, the WSD shall immediately replenish to the original amount any funds that are used from said retainer. Failure to replenish said retainer amount within 90 days of a request to replenish by KDA shall constitute a breach of this MOU. If this MOU is terminated upon its terms and in accordance with the terms of the Conservation Easement, then any unused retainer, after KDA has received full payment for all outstanding costs, shall be returned to WSD.

8. **LIABILITIES.** KDA and WSD acknowledge that each is a local or state governmental agency, and that liability is determined in accordance with the Kansas Tort Claims Act. The obligations of WSD in this paragraph shall survive the expiration or termination of this Agreement.
9. **ENFORCEMENT.** The terms and conditions of this MOU may be enforced in an action at law or equity by KDA against WSD should WSD violate or attempt to violate the same. Venue for any such action shall be in Shawnee County, Kansas. Enforcement of this MOU shall be at the reasonable discretion of KDA, and any forbearance on behalf of KDA to exercise its rights hereunder in the event of any breach by WSD shall not be deemed or construed to be a waiver of rights. If KDA shall prevail in an enforcement action, KDA shall also be entitled to recover its cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of the Conservation Easement or to the vegetative and hydrologic condition required by the mitigation approved by USACE that relate to the Real Property.
10. **INDEPENDENT CONTRACTOR.** Both parties hereto, in the performance of this MOU, will be acting in their individual capacity and not as agents, employees, partners in a joint venture, or as associates of one another. The employees or agents of one party shall not be named or construed to be employees of the other party for any purpose whatsoever.
11. **REPRESENTATIVES.** Designated representatives for the parties are:
- KDA:
[Name and contact info]
- WSD:
[Name and contact info]
12. **TERMINATION / NOTICES.** In addition to the termination provisions set forth in this MOU, this MOU may only be terminated in a manner consistent with the terms and requirements of the Conservation Easement.
- a. **Termination by WSD.** WSD may terminate this MOU for any reason by providing at least thirty (30) days written notice of termination to KDA; provided, however, that in such event, WSD shall identify a replacement third party easement holder acceptable to USACE for any remaining term of the Conservation Easement. Upon termination of this MOU by WSD, KDA will assign the Conservation Easement to the replacement third party easement holder identified by WSD.
- b. **Termination by KDA.** KDA may terminate this MOU for any reason by providing at least one-hundred eighty (180) days written notice of termination to WSD. In such event, WSD shall identify a replacement third party easement holder acceptable to USACE at least ninety (90) days prior to the effective date of

termination, to which KDA will assign the Conservation Easement upon termination. If WSD fails to identify a replacement third party easement holder acceptable to USACE at least ninety (90) days prior to the effective date of termination, KDA shall identify and assign the Conservation Easement to a qualified and willing grantee acceptable to USACE.

c. Termination Notices.

i. Notices to KDA shall be addressed as follows:

Chief Counsel
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502

ii. Notices to WSD shall be addressed as follows:

[Name and contact info]

d. Costs due in the event of termination. Notwithstanding any termination of this MOU, WSD shall reimburse KDA for all costs associated with performing services as the third-party easement holder pursuant to the Conservation Easement during the term thereof.

In WITNESS WHEREOF, the parties hereto have affixed their signatures.

Date: _____

**KANSAS DEPARTMENT OF AGRICULTURE,
DIVISION OF CONSERVATION**

By: _____
_____, _____

Date: _____

[WATERSHED DISTRICT]

By: _____
_____, _____

Exhibit A

Conservation Easement

(Attach a copy of the conservation easement once it has been executed and recorded.)

Exhibit B

Conservation Easement

THIS DEED OF CONSERVATION EASEMENT is given this day of ____, 20 ____, by _____, having an address of _____, having an address of _____ ("Grantor") to _____, having an address of _____ ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors, or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined), and the term "Grantee" shall include any successor or assignee of Grantee.

Witnesseth:

WHEREAS, Grantor is the sole owner in fee simple title of certain lands situated in _____ County, Kansas, more particularly described in Exhibit A, attached hereto and incorporated herein ("Property"), and

WHEREAS, Department Permit No. _____ of the U.S. Army Corps of Engineers ("Corps") (hereinafter referred to as the "Permit") authorizes certain activities which affect waters of the United States; and

WHEREAS, the Permit requires that Grantor preserve, enhance, restore, or mitigate wetlands or uplands located on the Property, and

WHEREAS, Grantor, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to the issuance of the Permit, is willing to grant a perpetual Conservation Easement over the Property. Although this easement is granted in perpetuity, should the impact on the woodland, wetland, or stream ecosystems which required this mitigation and thus this easement be eliminated, the easement may be revoked *if* approval is provided in writing from the Corps, as per Paragraph 16, and

NOW THEREFORE, in consideration of the above and mutual covenants, terms conditions, and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual Conservation Easement for and in favor of Grantee upon the property, which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. **Purpose:** The purpose of this Conservation Easement is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, or created shall be retained and maintained in the restored, enhanced, or created condition.

2. **Rights of Grantee:** The following rights are conveyed to Grantee and the Corps of Engineers by this easement:

- a. The right to take action, to preserve and protect the environmental value of the Property; and
- b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;
- c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor is complying with the covenants and prohibitions contained in this Conservation Easement; and
- d. The right to proceed at law or in equity to enforce the provisions of this Conservation Easement, and to prevent the occurrence of any of the prohibited activities thereafter set forth.

3. **Prohibited Uses:** Except for restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements, the following activities are prohibited on the Property:

- a. Construction of any structure or object (i.e., buildings, roads, above or below ground utilities, signs, billboard, etc.) without written approval from the Corps of Engineers prior to construction;
- b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
- c. Removal or destruction of trees, shrubs, or other vegetation, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Grantee;
- d. Planting of nuisance, exotic, or non-native plants as listed by the State of Kansas;
- e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance,
- f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep;
- g. Tilling, plowing, planting of crops, digging, mining or other activities that are or may be determinantal to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including, but not limited to, ditching, diking, and fencing;

h. The extraction of water from the Property, or the impoundment of water on the Property; so as to affect the hydrology of the Property;

i. Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas;

j. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. **Reserved Rights:** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with the intent and purposes of this Conservation Easement.

5. **Taxes:** Grantor shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** Grantor shall, at Grantee's sole expense, operate, maintain and keep up the Property consistent with the purpose of this Conservation Easement. Grantee shall remove from the Property any nuisance, exotic, or non-native plants as listed by the State of Kansas and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Permit.

7. **Hazardous Waste:** Grantor covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Grantee shall be responsible for any and all necessary costs of remediation.

8. **Public Access:** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

9. **Liability:** Grantor shall continue to retain all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from ownership of the Property. Neither Grantor, nor any person claiming by or through Grantor, shall hold Grantee liable for any damage or injury that may occur on the Property.

10. **Recording Requirements:** After recordation of this Conservation Easement in the official records of _____ County, Kansas, Grantee shall re-record it at any time to preserve their rights. Grantee shall pay all recording costs, fees and taxes necessary at any time to re-record this Conservation Easement in the public records. Grantor shall thereafter insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which grantor divests himself / herself / itself of any interest in the Property and shall provide a photocopy of the recorded Conservation Easement to the new owner(s).

11. **Enforcement:** The terms and conditions of this Conservation Easement may be enforced in an action at law or equity by the Grantee or the Corps against the Grantor violating or attempting to violate these Restrictions. Venue for any such action shall be in ____ County, Kansas. Enforcement of this Conservation Easement shall be at the reasonable discretion

of the Grantee or the Corps, and any forbearance on behalf of Grantee or the Corps to exercise its or their rights hereunder in the event of any breach by Grantor shall not be deemed or construed to be a waiver of rights. If the Grantee or the Corps shall prevail in an enforcement action, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Permits.

12. Assignment of Rights: Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantee shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantee at least sixty (60) days in advance thereof, and the Corps must accept the assignment in writing. The new grantee shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument shall be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment. In the event of dissolution of the Grantee or any successor, or failure for 60 days or more to execute the obligations of this Conservation Easement, the Grantee shall transfer this Conservation Easement to a qualified and willing grantee. Upon failure of the Grantee or any successor to so transfer the Conservation Easement, the Corps shall have the right to sue to force such an assignment to a grantee to be identified by the Court.

13. Successors: The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

14. Notices: All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

15. Severability: If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

16. Alteration or Revocation: This Conservation Easement may be amended, altered, released, canceled, or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of _____ County, Kansas. No action shall be taken, however, without advance written approval thereof by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Conservation Easement, and said letter shall be informal and shall not require notarization. Specifically, although this easement is granted in perpetuity, should the impact on the woodland, wetland, or stream ecosystems which

required this mitigation and thus this easement be eliminated, the easement may be revoked *if* approval is provided in writing from the Corps. Such authorization must be received prior to extinguishment and will occur at the discretion of the Corps after verification that the restoration is complete. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of _____ County, Kansas, within 30 days thereafter.

17. Controlling Law: The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Kansas.

GRANTOR FURTHER COVENANTS that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement and that no mortgages or other liens exist; that Grantor has good right and lawful authority to convey this Conservation Easement, and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

If the grantee named herein is, for any reason, determined not to be authorized or entitled to hold the interest granted herein, the Grantor shall within 60 days after notification thereof execute a substitute conservation easement to a new grantee containing terms and conditions similar to this conservation easement. The determination of lack of authority or entitlement may be made by either (a) a court of competent jurisdiction, (b) the precedential authority of a ruling by a court of competent jurisdiction, (c) a title insurance company's written refusal to insure the real property interest of the grantee named herein, or (d) a title opinion issued by an attorney at law licensed in the State of Kansas. Notification of lack of authority or entitlement of the grantee named herein may be made to the grantor by any person, including persons not privy to this easement. The substitute grantee shall be properly qualified as a "holder" under the Kansas conservation easement law, Kansas St. 58-3810 *et seq.* or successor statute.

TO HAVE AND TO HOLD, the Grantor covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the Grantee against all claims and demands. The Grantor covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed. The covenants, terms, conditions, restrictions, and purpose imposed with this Conservation Easement shall be binding upon Grantor and shall continue as a servitude running in perpetuity with Property.

Dated this _____ day of _____, 20____.

Grantor(s): _____
Print Name

Signature

Print Name

Signature

ACKNOWLEDGMENT

STATE OF KANSAS

COUNTY OF: _____

On this _____ day of _____ in the year 20____, before me, the undersigned notary public, personally appeared _____, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Notary Public

Residing at _____

My Commission Expires _____

ACCEPTANCE BY GRANTEE

I _____ (print name), _____ (title), being the duly authorized representative of the Grantee, do hereby accept this Conservation Easement Deed with respect to the rights and duties of the, Grantee.

Dated this _____ day of _____, 20.

Signature

Title

Closing Checklist For Third-Party Easement Holder

The “Closing Checklist for Third-Party Easement Holder” sets up the necessary steps (documents, signatures, and other actions) to finalize the Third-Party Easement. Please see following “Closing Checklist for Third-Party Easement Holder” for reference.



State Assistance in Watershed Dam Construction / Rehabilitation

Closing Checklist for Third-Party Easement

Closing Date: [_____]
 Between

[_____]

(Grantor)

THE KANSAS DEPARTMENT OF AGRICULTURE, DIVISION OF CONSERVATION
 (Grantee, Easement Holder)

And

[_____]

(Watershed District)

<u>Role</u>	<u>Identification</u>	<u>Abbreviation</u>
Grantor	_____ _____, _____ (if grantor is not an individual, include name and title/capacity of signing party)	Grantor
Grantee / Easement Holder	THE KANSAS DEPARTMENT OF AGRICULTURE, DIVISION OF CONSERVATION Signing party: _____, Executive Director or Secretary Department contact(s): Hakim Saadi Watershed Program Manager 785.291.3099; hakim.saadi@ks.gov	KDA
Watershed District	_____ (district name) _____, _____ (name and title of contact person)	WSD
Counsel for KDA	KDA Legal Department 785.564.6714	KDA
Corps	ARMY CORPS OF ENGINEERS _____, _____ (name and title of contact person)	Corps

PRE-CLOSING

	<u>Document / Action Item</u>	<u>Signing Parties</u> if applicable	<u>Responsible</u>	<u>Status</u>	<u>Comment</u>
1.	Easement identified and mitigation plan developed		WSD		
2.	Mitigation plan approved by Corps - Mitigation work does not have to be performed prior to grant of easement		WSD		
3.	Memorandum of Understanding - This document will set forth who has responsibilities for things prior to closing, and the obligations of the parties after closing (maintenance, inspections, costs, etc.)	WSD KDA	KDA		

CLOSING

	<u>Document / Condition Precedent</u>	<u>Signing Parties</u> if applicable	<u>Responsible</u>	<u>Status</u>	<u>Comment</u>
1.	Easement Agreement	Grantor (Acceptance by Grantee)	KDA		Use the SAKW version that includes language regarding revocation of the easement on the first page and in ¶ 16.

POST-CLOSING

	<u>Document / Action Item</u>	<u>Responsible Party</u>	<u>Status</u>	<u>Comments</u>
1.	Signed Easement Agreement submitted to Corps	KDA		
2.	Record Easement Agreement	WSD		
3.	Submit signed MOU and Easement Agreement to Corps	WSD		

6. Dam Rehabilitation

Introduction.....	6-2
Instructions for Dam Rehabilitation Applications	6-3
FORM – Application for Dam Rehabilitation Application	6-5
Administrative Policy	6-8
FORM - Structure Condition Report Worksheet	6-9
Instructions for Request for Payment	6-11
FORM - Request for Payment	6-12
Instruction for Construction Progress Report	6-14
FORM – Construction Progress Report	6-15

INTRODUCTION

Due to Kansas legislative action, the Division of Conservation revised the Watershed Dam Construction Program in 2006 to address the administration of the state cost-share financial assistance pertaining to dam rehabilitation.

The rehabilitation of a watershed dam involves any work, except work required due to inadequate operation and maintenance, to extend the service life of a dam and to meet the applicable safety and performance standards. The state may provide up to 70% cost share and an additional 10% engineering fees for dam rehabilitation, capped at an amount of \$120,000. Eligible rehabilitation activities may include sediment removal, structure upgrade and replacement of deteriorated components. The application deadline for dam rehabilitation is July 1 to be considered for funding in the next fiscal year.

The information and forms in this chapter pertaining to dam rehabilitation cost-share can also be found on the DOC website address below:

<https://agriculture.ks.gov/divisions-programs/division-of-conservation/flood-control-and-lakes-programs>

Application for State Cost-Share Assistance Watershed Dam Rehabilitation

Instructions for Dam Rehabilitation Applications

The following instructions will assist in the completion of the rehabilitation application form (to be added to the District and Contracting Officer Handbook). All forms may be copied but please use one side of the paper only.

- Section 1.** Complete the legal name of an applicant / district and the mailing address to receive all correspondences pertaining to the rehabilitation application.
- Section 2.** Complete structure and/or site number.
- Section 3.** Complete permit information.
- Section 4.** Complete General Plan date.
- Section 5.** Complete site description information.
- Section 6.** Complete structure size information.
- Section 7.** Complete sediment pool information.
- Section 8.** Complete detention pool information.
- Section 9.** Engineer's estimated construction and engineering costs for the rehabilitation project.
- Section 10.** Complete cost-share amount information. [Division of Conservation policy authorizes cost-share up to 70% of the cost of the rehabilitation plus the actual costs of engineering, geologic investigations and inspection costs not to exceed 10% of the actual cost of construction. The maximum cost-share per district or site per year is \$120,000.]
- Section 11.** State the scope of the proposed rehabilitation work: specify the components that are in need of rehabilitation. This should be supplemented by Attachment No.1 of Section 23 - preliminary rehabilitation design and cost estimates.
- Section 12.** Indicate the source(s) of funding for the original construction of the structure subject to rehabilitation. Indicate whether federal, state or private funds were used for the construction. Specify the percentage of the applicant financial contribution for the construction.
- Section 13.** List all anticipated sources and amounts of funds to be used for the project other than state cost-share funds.
- Section 14.** Indicate the current DWR hazard classification of the structure.
- Section 15.** Indicate the current DWR hazard classification. Substantiate your application with any documentation.

- Section 16.** If the hazard classification has changed, please indicate what measures have been or are planned to bring the structure to state standards and specifications. Substantiate your application with any documentation.
- Section 17.** If the structure has been declared unsafe, include a copy of order or letter of the Chief Engineer, Division of Water Resources.
- Section 18.** The applicant is expected to show proof of adequate operation and maintenance for structure. Watershed districts may substantiate request for whole watershed.
- Section 19.** The applicant / district will need to submit rehabilitation plans to DWR for approval or written consent. Such documents will be required prior to any DOC reimbursement.
- Section 20.** The applicant needs to provide assurances that no future development downstream of the structure will be allowed in the inundation area (examples: zoning, ordinances, or easements, etc.)
- Section 21.** The benefits of the structure are important justifications for the rehabilitation. Be thorough and realistic in listing the benefits. Attach appropriate calculations and substantiation.
- Section 22.** Attach any agreement stipulations.
- Section 23.** The applicant or district is encouraged to attach any calculation substantiation documentations, such as the following:
- Preliminary rehabilitation design and cost estimates including aerial photograph of site, a 7.5 min quad map showing structure, drainage area and downstream benefit area, and photos of the rehabilitation component. More than one photo should be keyed for the purpose of fitting together for an overall view of the project.
- Section 24.** The application deadline is July 1 to be considered for funding in the next fiscal year.
- Section 25.** Complete all information and signatures as requested.



**Application for State Cost-Share Assistance
 Watershed Dam Rehabilitation**

Dam Rehabilitation Applications

<p>APPLICATION FOR STATE COST-SHARE ASSISTANCE FOR DAM REHABILITATION</p>	<p>1. Applicant: _____ _____ _____</p>	
<p>MAIL TO: Kansas Department of Agriculture - Division of Conservation, 1320 Research Park Drive Manhattan, KS 66502 Phone: (785) 564-6620 E-mail: kda.doc@ks.gov</p>	<p>2. Structure / Site No. _____ 3. Applicable Dates: a. DWR Permit _____ b. 404 permit _____ c. Construction Completed _____ d. _____</p>	<p>4. Updated General Plan adopted by Board on [if applicable] _____</p>
<p>5. Description of site: a. Legal _____ b. County _____ c. Drainage Area (acres) _____</p>		<p>6. Structure Purpose, (circle all that apply): Flood Control Grade stabilization Recreational Water supply Others (indicate)</p>
<p>7. Sediment Pool: a. Volume (acre-feet) _____ b. Surface (acres) _____</p>	<p>8. Detention Pool: a. Volume (acre-feet) _____ b. Surface (acres) _____</p>	
<p>9. Estimated costs: a. Rehabilitation \$ _____ b. Engineering \$ _____ c. TOTAL \$ _____</p>	<p>10. State cost-share assistance requested: a. Rehabilitation \$ _____ (Maximum 70%) b. Engineering \$ _____ (Maximum 10 % of 9a) c. TOTAL \$ _____ (Maximum assistance-\$120,000 per district.)</p>	
<p>11. Scope of Rehabilitation Work:</p>		

12. Sources of funds for the original construction (private, state or federal). Indicate percentage of applicant financial contribution for construction and design.

13. Sources of funds sought for rehabilitation:

a. _____ \$ _____ b. _____ \$ _____
 c. _____ \$ _____ d. _____ \$ _____

APPLICATION FOR STATE
 COST-SHARE ASSISTANCE
 FOR DAM
 REHABILITATION

Applicant:

DOC-WD2
 Rev. Sept 2011
 Page 2 of 3

14. What's the current Hazard classification?

15. Has the hazard classification changed since the structure was built?

Circle one: Yes No Not Sure
 If yes, when?

Explain why the hazard classification changed.

16. Is the desired rehabilitation due to Hazard reclassification? Explain.

17. Has the structure been declared unsafe by the KDA, Division of Water Resources? Explain why and when.

18. Provide records of Operations and Maintenance that pertain to the subject structure.

19. Explain how the proposed rehabilitation work will bring the structure in compliance with applicable safety and performance standards. The Chief Engineer's approval or written consent for the rehabilitation work will be required prior to any SCC reimbursement.

20. Has an inundation map been developed for this site? What measure(s) would you implement to assure prevention of future inundation area development?

APPLICATION FOR STATE COST-SHARE ASSISTANCE FOR DAM REHABILITATION	Applicant: _____ _____ _____	DOC-WD2 Rev. Sept 2011 Page 3 of 3
---	---------------------------------------	--

21. Benefits of the structure. (Individuals, county roads, bridges, utilities, water quality, flood control, wildlife, fish and other benefits.) Use additional pages if necessary.

Benefits

Explanation of Benefits

_____ _____ _____	_____ _____ _____
-------------------------	-------------------------

22. The applicant agrees to:

- a. Operate the structure in a manner satisfactory to the Chief Engineer, Division of Water resources, Kansas Department of Agriculture.
- b. Maintain the structure in a safe and functional condition for the life of the structure.
- c. Perform annual Operation and Maintenance inspection and send copy of inspection to the Division of Conservation and to the Chief Engineer.
- d. Perform necessary operation and maintenance at own expense.

23. Attachments- A complete application must include the following attachments:

- No. 1- Preliminary rehabilitation design and cost estimates.
- No. 2- Cost estimates for dam breach analysis, (if needed).
- No. 3- Structure condition report worksheet or current year O&M Inspection Report (Form provided by DOC).

24. Submit originals to the State Conservation Commission no later than July 1st.

25. The applicant certifies that the information and statements in this application are true and correct.

 Print (name)

 Signature

 Date

Administrative Policy

In light of the changes in the Streams Obstructions Act (implementation of House Bill 2363) the Division of Conservation is adopting the following policy for Watershed Districts seeking cost-share assistance for the construction or rehabilitation for flood control structures.

A flood control structure that will not be jurisdictional (no DWR dam safety permit will be required), will be eligible for state cost-share assistance if the structure meets the following:

- As proposed in the General Plan or subsequent amendments (location, hazard and class).
- Registered with the Division of Water Resources.
- Detention storage computation should be:
 1. Low Hazard, Flood Control 4% chance
 2. High or Significant Hazard, Flood Control 2% chance
- Permanent pool capable of storing the 50-yr. sediment load.
- Drawdown pipe should evacuate 90% of the volume of the permanent pool in 14 or fewer days.
- Principal spillway pipe should evacuate 95% of the of the detention storage in 14 or fewer days.

The funding priority ranking of structures shall include:

- Structure designed with sound engineering principles and practices by a Kansas Licensed Professional Engineer.
- Water Right Permit if the sediment pool storage is greater than 15 ac-ft.
- 404-permit or a Non-Jurisdictional Determination.
- Breach Inundation Map.

Prior to funding approval, the District must certify to the Division of Conservation that the structure will be constructed under the supervision of a Kansas Licensed Professional Engineer.

A certificate of completion signed by a Kansas Licensed Professional Engineer will be required prior to final payment reimbursement.



STRUCTURE CONDITION REPORT WORKSHEET

Applicant: _____

Site No.: _____ Date Structure Built: _____

Water Structure No.: _____ Date Permitted: _____

Current Hazard Classification, (as per DWR): _____

Breach Inundation area mapped, (circle one): Yes or No

- Condition:**
1. Adequate-No maintenance problem
 2. Potential Problem-Requires follow-up
 3. Deficient-Action required

- Instructions:**
1. Circle the overall condition number in each of the seven areas. When a 2 or 3 is circled, please include comments that will describe problem, corrective action required and estimated completion date.
 2. See reverse side for items of concern in each area.
 3. Attach pictures of items in need of rehab.

Area	Condi on	(Comments necessary if 2 or 3 is circled) Needed Maintenance and Repairs	Estimated Completion Date
Embankment	2 3		
Principal Spillway	1 2 3	Pipe flowing: Y N Describe the flow:	
Emergency Spillway	1 2 3		
Slope Protection	1 2 3		
Stilling Basin	1 2 3		
Fences	1 2 3		
Reservoir Area	1 2 3		
Drain Outlets	1 2 3	Drain flowing: Y N Describe the flow:	

Remarks: (you may add any details on a separate sheet)

O&M Inspector: _____ **Date:** _____

STRUCTURE CONDITION REPORT WORKSHEET

Checklist

<p>1. <u>Embankment</u></p> <ul style="list-style-type: none"> A. Adequate vegetation B. Any trees or shrubs C. Cracks or openings D. Unusual settlement E. Seepage or slips F. Abutments G. Erosion areas H. Rodent or livestock damage I. Vehicle track damage 	<p>2. <u>Principal Spillway</u></p> <ul style="list-style-type: none"> A. Trash rack B. Concrete riser condition C. Obstructions or trash D. Corrosion E. Pipe damage external F. Pipe alignment G. Outlet section H. Pipe damage internal I. Joint gap (first 3 years)
<p>3. <u>Emergency Spillway</u></p> <ul style="list-style-type: none"> A. Adequate vegetation B. Erosion C. Obstructions 	<p>4. <u>Slope Protection</u></p> <ul style="list-style-type: none"> A. Erosion B. Vegetation C. Trash
<p>5. <u>Stilling Basin</u></p> <ul style="list-style-type: none"> A. Trash or obstruction B. Stilling basin slopes C. Channel outlet D. Pipe support or dam undercut E. Downstream channel 	<p>6. <u>Fence</u></p> <ul style="list-style-type: none"> A. Trash B. Tension C. Gates D. Posts
<p>7. <u>Reservoir Area</u></p> <ul style="list-style-type: none"> A. Undesirable vegetation B. Flood pool area debris 	<p>8. <u>Drain Outlets</u></p> <ul style="list-style-type: none"> A. Drawdown pipe condition B. Water quality

Application for State Cost-Share Assistance Watershed Dam Construction / Rehabilitation

Instructions for Request for Payment

The following instruction will assist in the completion of the application form found in the Watershed District Handbook. All forms may be copied but please use one side of paper only.

A. Contractor Payment Estimate

Section 1. District name & address where contract correspondence is to be mailed

Section 2. Project site number, numerical sequence of estimates and date of estimate

Section 3. Full name and address of contractor

Section 4. Line 4a is the amount of the contract with the contractor.

Line 4a (1) and (2) are revisions due to contract change order.

Line 4b is the adjusted contract based upon approved change orders. Include a copy of approved change orders.

Section 5. Complete each line item for “This Period” and “To Date”. This section is for payment due to the contractor. Include a copy of the progress report.

Section 6. Certification of the Engineer and Contracting Officer / Manager

Section 7. Certification of contractors.

Section 8. Release of claims by contractors.

B. Fencing and Seeding Contract

Use this section when the fencing and seeding is separate from the construction contract. Include a copy of the contract for fencing and seeding. The total costs for a separate contract for fencing and seeding are also entered on Part 4, line B2.

C. Engineering Services

Complete upon request for final payment of state contract. Total engineering costs are also entered in Part 4, line B4.

D. Request for State Reimbursement

- Partial payment - complete Section A.
- Final payment - complete Section B and C.

Note: Submit Part 1 with all requests for Reimbursement.

Certification - Contracting Officer / Manager signs and dates request.



**Application for State Cost-Share Assistance
Watershed Dam Construction / Rehabilitation
Request for Payment**

**PART I - CONTRACTOR PAYMENT ESTIMATE.
Submit Part I with all Requests for Reimbursement.**

1. <u>NAME & ADDRESS OF DISTRICT</u>	2. SITE NO. _____ ESTIMATE NO. _____ DATE _____	3. <u>NAME & ADDRESS OF CONTRACTOR</u>
4. <u>CONSTRUCTION WORKSHEET:</u> (Attach Progress Report & Change Order) a. Original approved construction contract amount \$ _____ (1) PLUS: Revisions due to contract change order _____ (2) LESS: Revisions due to contract change order _____ b. Adjusted construction contract amount to date \$ _____		
5. <u>ANALYSIS OF WORK PERFORMED AND AMOUNT EARNED:</u>	<u>THIS PERIOD</u>	<u>TO DATE</u>
a. Original contract work completed	\$	\$
b. Change order work completed	\$	
c. Total cost of work completed	\$	
(1) LESS: Retained percentage (<u>10</u> %)	\$	
d. Net amount earned on contract work	\$	
(1) LESS: Previous payments to contractor	\$	
e. BALANCE DUE CONTRACTOR THIS PAYMENT	\$	
6. <u>ENGINEER CERTIFICATION:</u> I hereby certify that I have inspected the above work, that to the best of my knowledge it is in accord with contract requirements, that the estimated quantities are correct, and that work herein for the period from _____ to _____ has not been reported on any previous estimate. SIGNATURE: _____ DATE: _____ ENGINEER SIGNATURE: _____ DATE: _____ CONTRACTING OFFICER / MANAGER		
7. <u>CONTRACTOR CERTIFICATION:</u> I hereby certify I have performed the work designated on this report and request payment accordingly. CONSTRUCTION CONTRACTOR SIGNATURE: _____ DATE: _____ SEEDING AND/OR FENCING CONTRACTOR SIGNATURE: _____ DATE: _____		

8. RELEASE OF CLAIMS (TO BE COMPLETED UPON COMPLETION AND ACCEPTANCE OF THE STRUCTURE):

I, _____ do hereby release the
 (CONSTRUCTION CONTRACTOR) (SEEDING & FENCING CONTRACTOR) (DISTRICT)
 _____ from any and all claims of any character whatsoever arising under and by virtue of Construction
 Contract dated _____, as amended, except as herein stated,
 and/or Seeding and Fencing Contract dated _____.

CONTRACTOR SIGNATURE: _____ DATE: _____ SEEDING AND/OR FENCING
 CONTRACTOR SIGNATURE: _____ DATE: _____

PART II - FENCING & SEEDING CONTRACT, IF SEPARATE CONTRACT: (Final payment only)

Item	Quantity	Unit Price	Costs
TOTAL FENCING & SEEDING COSTS \$ _____			

PART III - ENGINEERING SERVICES: (Final payment only) Itemized services performed:

Services Performed	Costs
TOTAL ENGINEERING COSTS \$ _____	

PART IV - REQUEST FOR STATE REIMBURSEMENT: Complete section A or B and C.

A. REQUEST FOR PARTIAL PAYMENT

1. Construction contract completed to date (Part I, 5c)
2. Partial payment cost-share rate - 65% x 65
3. Cost-share earned \$
4. LESS partial payments received from the State \$
5. TOTAL PARTIAL PAYMENT REQUESTED \$
 (Not to exceed 95% of the State approved contract)

B. SUMMARY OF FINAL COSTS - Construction completed on

1. Final construction contract costs (Part I, 5c) \$
2. Final fencing and seeding costs (if separate Part II) \$
3. Total construction costs (Line 1 plus 2) \$
4. Total engineering costs (Part III) \$

C. REQUEST FOR FINAL PAYMENT

1. Total construction costs \$
2. State cost-share rate - 70% x 70
3. Cost-share earned for construction \$
4. Actual engineering, geologic investigations, and inspection costs or 10% of total construction costs \$
5. Cost-share subtotal (Line 3 plus 4) \$
6. Approved state contract \$
7. Partial payments submitted and/or received \$
8. TOTAL REQUESTED AS FINAL PAYMENT \$
 (Subtract line 7 from smaller of line 5 or 6)

CERTIFICATION: I hereby certify that to the best of my knowledge the above is correct.

SIGNATURE: _____ DATE: _____

CONTRACTING OFFICER / MANAGER _____

<p style="text-align: center;">Application for State Cost-Share Assistance Watershed Dam Construction / Rehabilitation</p>

Instructions for Construction Progress Report

The following instruction will assist in the completion of the application form found in the Watershed District Handbook. All forms may be copied but please use one side of paper only.

1. Part I:

Section 1. Site number

Section 2. Date and number of estimate

Section 3. Name of watershed district

Section 4: Item number from bid schedule.

Section 5: From Bid schedule.

Section 6: Completed during period as indicated for each item.

Section 7: Total completed to date.

Section 8: Total of cost columns only.

2. Part II: Construction Progress Report-Change Order

A summary of the change orders: Complete all information as requested, using information from Change Order, Form 7.



**Application for State Cost-Share Assistance
Watershed Dam Construction / Rehabilitation**

Construction Progress Report

PART I: Complete when submitting request for payment.

1. Site No.		2. Estimate No.:		3. Name of District:		
		Date:				
4. Item No.	5. Original or Requested Quantity and Unit:	6. Completed this period:			7. Completed to Date:	
		From To		From To		
		Quantity	Unit Price	Unit Cost	Total Quantity	Total Amount
			\$	\$		\$
8. Total of Cost Columns:				\$		\$

PART II: Complete only if a Change Order (Form 7) has been made and a copy is attached.

construction progress report - change order

1. Contract change order	2. Description	3. Additional to original contract price		4. Deductions from contract price as shown on change orders
No. Date		Total cost of items added by change order	Cost of change order items completed to date	
		\$	\$	\$
5. Totals:		\$	\$	\$

7. Inundation Maps

This chapter has been deleted as Inundation Maps are construed as component of Rehabilitation of existing flood control structure. Districts interested in Inundation Maps should apply for a comprehensive rehabilitation (which includes Inundation Maps).

8. Watershed District Law & Other Legal Information

Introduction.....	8-2
Watershed District Act (Statutes)	8-2
Watershed Dam Construction Program - Kansas Administrative Regulations	8-22
Attorney General Opinions	8-27
Kansas Open Records Act (KORA)	8-39
Kansas Open Meetings Act (KOMA).....	8-49
Federal PL-566 Watershed Protection and Flood Prevention Act.....	8-57
Environmental Coordination Act (ECA)	8-58
Obstructions in Stream Act.....	8-59
Tax Reduction Law.....	8-64
Liability/Tort Claims Act.....	8-66
Conflict of Interest Prohibitions.....	8-67

Introduction

Kansas watershed districts are political subdivisions of state government. District directors are public officials and district employees are public employees. In order to maintain the public trust, and be eligible for public funds, watershed districts must comply with applicable Kansas Statutes.

Watershed Districts Act (Statutes)

24-1201: Title of act. This act shall be known as the watershed district act.

History: L. 1953, ch. 477, § 1; June 30.

24-1201a. Declaration of public necessity for creation of districts; power; benefits. It is recognized that serious problems of water management resulting from erosion, floodwater or sediment damages or instability of natural water supplies are arising in the watersheds of the rivers and streams of the state of Kansas; that for the purpose of alleviating such damages and furthering the conservation, development, utilization and disposal of water and thereby preserving and protecting the state's land and water resources, it is legislatively determined that it is necessary and advisable to establish watershed districts with the power to construct, operate and maintain works of improvement needed to carry out such purposes; that there is hereby declared the public necessity for the creation of such districts in watersheds including lands that are subject to erosion, floodwater or sediment damages or that would be benefited by the construction of works of improvement for the conservation, development, utilization and disposal of water; and that it is further declared that the formation of such districts will inure to the general benefit of all of the taxable, tangible property included therein.

History: L. 1961, ch. 193, § 2; July 1

24-1202: Definitions. The following terms when used in this act shall be construed to have the meaning ascribed to them in this section: (a) "Person" shall mean any person, firm, partnership, association or corporation; (b) "publication" shall mean the publication in a newspaper or newspapers admitted to the United States mail as second-class matter, of general circulation within the watershed district; (c) "land" shall mean real property as that term is defined by the laws of the state of Kansas, and shall include any road, highway, bridge, street or other right-of-way; (d) "chief engineer" shall mean the chief engineer of the division of water resources of the Kansas department of agriculture; (e) "board" shall mean the board of directors of a watershed district; (f) "district" shall mean an area comprising a watershed or two or more adjoining watersheds exclusive of lands within other organized watershed districts for which organization is proposed or which has been organized under the provisions of article 12 of chapter 24 of the Kansas Statutes Annotated, and amendments thereto. The district shall not include the territorial limits of any incorporated city unless the petition circulated and filed as provided for in article 12 of chapter 24 of the Kansas Statutes Annotated, and amendments thereto, shall clearly indicate that the territory of such a city is to be included in such watershed district; (g) "specific project" means any project outlined and proposed by the directors and may constitute all or part of a general plan; (h) "watershed" shall mean all of the area within the state draining toward a selected point on any watercourse, stream, lake or depression; (i) "sub-watershed" shall mean a division of the district as nearly equal in size to other divisions of the district as feasible and including as

nearly as practicable one or more tributaries to the main stream which drains from the district;(j) "qualified voter" shall mean any qualified elector of the district and any person 18 years of age or over owning land within the district, although not a resident therein;(k) "landowner" shall mean the record owner of the fee in any real estate in the district or the fee in the surface rights of any real estate in the district, but the owners of an oil and gas lease, mineral rights or interest, easements or mortgages as such shall not be considered landowners, and school districts, cemetery associations and municipal corporations shall not be considered landowners;(l) "steering committee" shall be the group of qualified voters, not less than the number to be chosen for the board of directors, who shall serve as the governing body of the proposed watershed district until the first board of directors is elected;(m) "general plan" shall mean a preliminary engineering report describing the characteristics of the district, the nature and methods of dealing with the soil and water problems within the district, and the projects proposed to be undertaken by the district. It shall include maps, descriptions and such other data as may be necessary for the location, identification and establishment of the character of the work to be undertaken and such other data and information as the chief engineer may require.

History: L. 1953, ch. 477, § 2; L. 1955, ch. 201, § 1; L. 1959, ch. 172, § 1; L. 1961, ch. 193, § 1; L. 1972, ch.124, § 4; L. 2004, ch. 101, § 73; July 1

24-1203: Establishment of district by petition. Except as otherwise provided by K.S.A. 24-1203a, before any watershed district shall be organized, a petition shall be filed in the office of the secretary of state, signed by not less than 20% of the landowners and representing 25% of the acreage within said proposed district as shown by a verified enumeration of said landowners taken by a landowner of said proposed district to be selected by the first 10 signers of the petition. A verified copy of such enumeration shall be attached to and filed with the petition in the office of the secretary of state. For purposes of determining ownership, the county clerk of the county in which any part of the watershed is described, upon demand, shall furnish the record of the ownership of the lands within the county from the tax rolls of the county, and such record of ownership shall be satisfactory evidence of title.

History: L. 1953, ch. 477, § 3; L. 1955, ch. 201, § 2; L. 1959, ch. 172, § 2; L. 1995, ch. 210, § 5; May 4.

24-1203a.Establishment of district initiated by board of county commissioners. (a) In lieu of the procedures provided by K.S.A. 24-1203, 24-1204 and 24-1205, and amendments thereto, the board of county commissioners of any county may adopt a resolution proposing the establishment of one or more watershed districts within the county and appointing the steering committee of each proposed district if:(1) The lands within each proposed district comprise substantially a watershed or two or more adjoining watersheds, as determined by the chief engineer; and(2) in the preceding five-year period, the governor has issued a proclamation declaring a state of disaster emergency in the county due to flooding.(b) The resolution shall contain the information required for a petition under K.S.A. 12-1204, and amendments thereto, and shall have appended and incorporated by reference a map showing the lands to be included in each proposed district and the sub-watersheds therein, prepared in consultation with the chief engineer. Upon adoption of such resolution, the county commission shall transmit a certified copy of the resolution to the chief engineer. (c) All costs of projects and works of a watershed district established under this section shall be paid by a general levy against all taxable tangible property located within the district.(d) This section shall be part of and supplemental to the watershed district act.

History: L. 1995, ch. 210, § 4; May 4

24-1204: Contents of petition; form. The petition required by K.S.A. 24-1203, and amendments thereto, shall set forth:

- 1) The proposed name of the district, which name shall end with the words "watershed district number _____." If the district is located in two or more counties the name of the district shall end with the words "watershed joint district No. _____." It shall be the duty of the secretary of state to assign a number to each such district in the order in which petitions for their organization are received thereby.
- 2) A description of the lands to be included within the proposed district, separated as to sub-watersheds, if any, and identified by section numbers and fractions thereof, and other platted areas as appropriate.
- 3) A statement of the purposes for which the district is to be organized.
- 4) A statement of the number of persons that will constitute the board of directors of the district, which shall be an uneven number of not less than three and not more than 15, together with the names and addresses of the persons who will constitute the original steering committee.
- 5) Any other matter deemed essential.
- 6) A prayer for the organization of the districts as a nonprofit corporation.
- 7) A map showing the lands to be included in the district and sub-watersheds therein, prepared in consultation with the chief engineer, shall be attached to the petition as an exhibit and incorporated therein by reference. The petition shall be in substantially the following form:

Before the Secretary of State of the State of Kansas

In the Matter of _____ Watershed (Joint) District Number _____, _____ and _____ counties, Kansas.

PETITION

Come now the undersigned persons and state that they are landowners within the proposed boundaries of the aforementioned watershed district, hereinafter more fully described, and that each signer states that the signer's respective post-office address is set forth beside the signer's name. That the purposes for which this district is organized are (state purposes). That a steering committee for the organization of the district is hereby fixed and constituted with _____ members; that the names of persons who will serve on the original steering committee, of which the first named shall be acting chairman, and their respective addresses are as follows:

(List names and addresses.)

The governing body of the district shall be constituted in a board of directors composed of (number) qualified voters.

That attached hereto, marked Exhibit A and made a part hereof as fully as if set forth herein, is a map showing the lands proposed to be included in the district and sub-watersheds therein.

That the lands proposed to be included in the district and sub-watersheds therein are described as follows: (Description of lands by sub-watersheds.) That the lands proposed to be included in the district and sub-watersheds therein do not embrace the territorial limits of any incorporated city, or any part thereof, except those specifically described in the petition. Wherefore, the undersigned, individually and collectively, pray that a watershed district be organized in the manner provided by law, for the purposes set forth herein, and that the secretary of state and the chief engineer of the division of water resources of the Kansas state board of agriculture proceed diligently in the performance of their duties so that the organization of this proposed district may be completed and approved at the earliest possible time.

Submitted to the secretary of state this _____ day of _____, ____.

History: L. 1953, ch. 477, § 4; L. 1955, ch. 201, § 3; L. 1957, ch. 226, § 1; L. 1959, ch. 172, § 3; L. 1961, ch.193, § 4; L. 1987, ch. 122, § 1; L. 2004, ch. 101, § 74; July 1.

24-1205: Petition, circulation; inclusion of city or part thereof within proposed boundaries, identification; filing and determination of sufficiency of petition: A counterpart of the petition, setting forth the text of the petition in full, shall be circulated within the proposed boundaries of the district: *Provided*, That when an incorporated city, or any part thereof, included as a part of the lands within the proposed boundaries of the district and not excluded by reference therein, the naming of the city, and [class] thereof, and a statement as to what part or all of the lands within said city are to be included within the proposed boundaries of said district, shall be sufficient identification within said petition, and approval of said watershed district formation shall be by election duly called by the governing body of said city for such purpose of approval or disapproval by the qualified voters of the area in said city sought to be included in said watershed district, and if approved by vote, the mayor of said city shall be directed to sign said petition as representative of said land within said city limits and for the total of said lands encompassed therein and if disapproved by the qualified voters therein, the city, or part thereof, shall be excluded from the district.

A duplicate original or a photographic copy of the original petition, with copies of all signature sheets attached thereto, shall be furnished to the county clerk of each county wherein lies a part of the proposed district. All counterparts shall be filed with the secretary of state at the same time and shall be received and treated by him as a single petition. The secretary of state shall determine the sufficiency or insufficiency of the petition on the basis of the information as to the number and qualification of signers as shown by the verified enumeration filed with the petition. In the making of such findings, the secretary of state shall consider the signature of the mayor of any city which has approved said petition as herein provided as the signature of one landowner and shall include the stated acreage within said city as being represented by said signature in computing the acreage within the district. The secretary of state shall endorse his findings and the date thereof on the face of the petition, and shall notify, in writing, the person designated in the petition as the acting chairman of the steering committee of his findings.

History: L. 1953, ch. 477, § 5; L. 1955, ch. 201, § 4; L. 1957, ch. 226, § 2; L. 1959, ch. 172, § 4; L. 1961, ch. 193, § 5; July 1.

24-1206: Sufficient petition transmitted to chief engineer; investigation, report and approval or disapproval; approval required, when; transmittal of approval to secretary of state and to chairperson of steering committee. (a) If the secretary of state finds the petition to be sufficient as to form and the number and qualifications of the petitioners, the secretary of state shall prepare a certified copy of the petition and transmit it to the chief engineer within five days after the secretary of state's determination of sufficiency.

(b) Upon receipt of a certified copy of a petition transmitted pursuant to subsection (a) or a certified copy of a resolution transmitted pursuant to K.S.A. 24-1203a, the chief engineer shall institute an investigation of each proposed district, its territory and purposes and, within 90 days after receipt of such copy shall transmit a written report of the chief engineer's findings on the petition or resolution, together with the chief engineer's written approval or disapproval of the petition or resolution, to the secretary of state and the acting chairperson of the steering committee named in the petition or resolution.

(c) The chief engineer shall approve the petition or resolution if the chief engineer finds and discloses by the chief engineer's report that:

(1) The lands proposed to be included in each district comprise substantially a watershed or two or more adjoining watersheds;

(2) each proposed district would not include lands in any existing watershed district;

(3) the statement of purposes contained in the petition or resolution conforms with the intents and purposes of this act;

(4) the lands within each proposed district or part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water;

(5) the boundary of each proposed district is defined, as far as practicable, so as to include all quarter-quarter sections of which more than 1/2 of each is within the watershed;

(6) the downstream limit of each proposed district is established with due regard to the location of highways and railroads and the location and character of existing works of improvement, the boundaries of any organized levee, drainage, irrigation and watershed districts, and the physical characteristics of and the probable relative effect of the operation of the proposed district upon any flood plane area common to both the stream or watercourse and any other stream or watercourse; and

(7) the map attached to the petition or resolution and the description of lands proposed to be included in each district are adequate and correct, except the chief engineer, in the chief engineer's report, may make any minor corrections with respect to the map or the description of lands proposed to be included in the district to make such map and description of lands conform to the map previously prepared in consultation with the chief engineer and such corrections shall thereupon become a part of the petition or resolution and be deemed effective without a recirculation of the corrected petition among the landowners or amendment of the resolution.

(d) If the chief engineer approves the petition or resolution, the chief engineer shall transmit a certified copy of the chief engineer's report to the secretary of state and to the chairperson of the steering committee of the district.

History: L. 1953, ch. 477, § 6; L. 1957, ch. 226, § 3; L. 1959, ch. 172, § 5; L. 1961, ch. 193, § 6; L. 1995, ch. 210, § 6; May 4

[SH1]

24-1207: Meeting of steering committee; notice; election of board of directors; officers; election on organization of district; voting places and election procedures; certification of results to secretary of state; certificate of incorporation, issuance and recordation, when; actions attacking incorporation, limitations.

(a) Within 10 days after receipt of a certified copy of the chief engineer's report approving the petition or resolution, or the petition or resolution as amended or revised by the chief engineer, the chairperson of the steering committee of the proposed district shall call a meeting of the committee by mailing a written notice fixing the time and place of such meeting to each member of the committee at least five days in advance of the time so fixed, unless such notice is duly waived. The committee shall meet at the time and place fixed in the notice for the purpose of electing from their number a board of directors consistent with the number set out in the petition, and this board of directors, after being duly elected, shall elect from their number a president, vice-president, secretary and treasurer, except that in a district having only three directors, the board shall elect one person to hold the offices of secretary and treasurer. The board, by resolution, shall provide for the calling of an election of the qualified voters of the district for the purpose of submitting the question of whether the district should be organized and created in

accordance with the petition or resolution, or the petition or resolution as amended or revised by the chief engineer.

(b) The board shall designate one or more centrally located voting places within the proposed district, but if the territory of the proposed district lies in more than one county, at least one voting place shall be designated within each county of the proposed district, and shall name and appoint three judges and two clerks for each voting place designated, which judges and clerks shall take an oath to faithfully perform their duties as judges and clerks, respectively, and shall each receive compensation of \$8 per day for their services. The board shall cause a notice of the special election to be published for three consecutive weeks in a newspaper of general circulation within the proposed district, the first publication to be not less than 21 days prior to such election. If the proposed district lies in more than one county, a similar notice shall be published in a newspaper of general circulation in each of the counties in which a part of the proposed district is located. The notice shall set forth the time and place or places of holding the election and the proposition to be voted on, shall contain a copy of the petition or resolution, or the amended or revised petition or resolution (omitting the map attached thereto as an exhibit) and shall be signed by the president and attested by the secretary of the board. Any qualified voter shall be entitled to vote at such election. The vote at such election shall be by ballot, and such ballot shall comply with the usual requirements for an official ballot for public office insofar as such requirements are applicable thereto. Upon such ballot shall be printed the proposition submitted, preceded by the words, "Shall the following be adopted?" and followed by the words "To vote in favor of the proposition make a cross * mark in the square after the word 'Yes'" "To vote against the proposition make a cross * mark in the square after the word 'No.'"

(c) Returns from the election shall be made to the board of directors who shall canvass the votes cast at the election on the second Friday following the date of the election. The board shall immediately certify the results of the election to the secretary of state. If a majority of those voting on the proposition voted in favor of the organization and creation of the district upon the petition or resolution, or amended or revised petition or resolution, the secretary of state shall thereupon issue to the board of directors a certificate of incorporation for the district, which shall be filed of record in the office of the register of deeds of each county in which all or a portion of the district lies. Upon such recordation of the certificate of incorporation the district shall be authorized to function in accordance with the provision of this act and its certificate of incorporation. If a majority of those voting on the proposition voted against the organization and creation of the district, the secretary of state shall endorse that fact on the face of the petition or resolution and the proceedings shall be closed. No action attacking the legal incorporation of any watershed district organized under this section shall be maintained unless filed within 90 days after the issuance of the certificate of incorporation for such district by the secretary of state, nor shall the alleged illegality of the incorporation of any such watershed district be interposed as a defense to any action brought after such time.

History: L. 1953, ch. 477, 7; L. 1955, ch. 201, § 5; L. 1957, ch. 226, § 4; L. 1959, ch. 172, § 6; L. 1961, ch. 193, § 7; L. 1995, ch. 210, § 7; May 4.

24-1208: Payment of costs and expenses when petition or resolution is disapproved by engineer or defeated by voters; tax levy. If the organization of the proposed district is defeated at the special election or if the petition or resolution is disapproved by the chief engineer, the board of directors or steering committee named in the petition or resolution shall continue to function in a limited capacity for the purposes hereinafter set forth in this action. Such board or steering committee shall determine the amount of money necessary to pay all of the costs and expenses incurred in the preparation and filing of the petition or resolution and in the conduct of

the special election and shall certify a statement of such amount to the county clerk of each county in which the proposed district was to be located. Such county clerks shall thereupon ascertain the total assessed valuation of all taxable tangible property in their respective counties within the proposed district and certify such valuation to the county clerk of the county in which the acting chairperson of the board or steering committee of the proposed district resides.

Such county clerk shall determine the levy necessary to be spread against the taxable tangible property in the entire proposed district in order to raise funds sufficient to pay the amount set forth in the statement and shall certify such levy to the county clerk of the other counties in which a portion of the proposed district is located. Each of the county clerks shall then cause such levy to be extended against the taxable tangible property lying within the boundaries of the proposed district and within the clerk's county. The county treasurers of the respective counties involved shall remit the funds raised by such levy in their counties to the county treasurer of the county in which the acting chairperson of the board or steering committee resides. Such treasurer shall hold such funds and shall honor warrants drawn upon such funds by the acting President of the board or steering committee and countersigned by the acting secretary of the board or steering committee in payment of the costs and expenses incurred in the proposed organization of the district and shown on the aforementioned statement of expenses.

History: L. 1953, ch. 477, § 8; L. 1959, ch. 172, § 7; L. 1995, ch. 210, § 8; May 4.

24-1209: Corporate powers and duties. Each watershed district incorporated under the provisions of this act shall be a body politic and corporate and shall have the power:

First. To adopt a seal.

Second. To sue and be sued by its corporate name.

Third. To purchase, hold, sell and convey land and personal property and to execute such contracts as may, by its board of directors, be deemed necessary or convenient to enable it to properly carry out the purpose for which organized.

Fourth. To construct, improve, maintain and operate works of improvement including such facilities and appurtenances as necessary for the conservation of soil, prevention of floods, disposal of water and the conservation, development and utilization of water for domestic, municipal, agricultural, industrial, recreational purposes and such other uses as may be authorized by the provisions of K.S.A. 82a-701 to 82a-725, inclusive, and any amendments thereto; and in any case where the construction, improvement or operation of such works causes the substantial displacement of a wildlife habitat and when required by the soil conservation service of the United States department of agriculture as a condition precedent to the release of federal funds for such works, to acquire land for the purpose of restoring such wildlife habitat. The power of eminent domain shall not be used for any such acquisition.

Fifth. To operate or lease any and all district properties and facilities associated with the use of water and to collect reasonable fees, rentals, tolls, and charges for the use of such facilities, said revenue to be placed in the maintenance fund of the district. Where the property is leased the lessee or anyone authorized to collect such fees, rentals, tolls and charges shall conform to a schedule approved by the board of directors of the district.

Sixth. To employ such professional services and other assistance as is, by its board of directors, deemed essential. Soil conservation engineering services may be used whenever available.

Seventh. To acquire personal property by gift or purchase.

Eighth. To acquire land and interests in land by gift, purchase, exchange or eminent domain; such power of eminent domain to be exercised within or without the boundaries of the district in like manner as provided by K.S.A. 26-501 to 26-516, inclusive, or any amendments thereto.

Ninth. To levy taxes and assessments, issue bonds and incur indebtedness within the limitations

prescribed by this act.

Tenth. To cooperate and contract with persons, firms, associations, partnerships and private corporations, and with other watershed districts, drainage districts, and cities of all classes of this state, and with drainage districts, watershed districts, or other public corporations organized for similar purposes in any adjoining state and with other local, state and federal governmental agencies and to enter into co-operative contracts and agreements with any such districts, corporations or agencies.

Eleventh. (a) To take appropriate actions to extend and transfer the territory of the district, receive territory transferred from other districts, and dissolve all or a portion of the district as provided for in this act; (b) to merge with adjoining watershed districts, subject to approval of a majority of the qualified voters voting on the proposition in each of the districts proposing to merge.

Twelfth. To select a residence or home office for the watershed district, which shall be at a place in a county in which the watershed district or any part thereof is located and may be either within or without the watershed district as may be designated by the board of directors. The board shall thereupon designate the county in which said residence or home office is located as the official county for the filing of all official acts and levies. After an official county has been so designated, said county designation shall not be changed even though the residence or home office of said watershed district may be changed at a later date.

History: L. 1953, ch. 477, § 9; L. 1955, ch. 201, § 6; L. 1957, ch. 226, § 5; L. 1959, ch. 172, § 8; L. 1961, ch.193, § 8; L. 1963, ch. 234, § 69; L. 1976, ch. 175, § 1; July 1

24-1210: Directors; number; terms; expenses. All powers granted to watershed districts incorporated under the provisions of this act shall be exercised by a board of directors which shall be composed of any odd number and specified in the petition for creation of the district, of qualified voters of the district. Such board shall be composed of not less than three and not more than 15 qualified voters. Boards in existence on the effective date of this act consisting of more than 15 members shall determine the number of board members, which in no case shall exceed the current number of board members. At least one director shall be selected from each sub-watershed located within the district. Each director shall serve for a term of three years, and until a successor is duly elected and qualified, except that one-third of the original directors designated in the petition for organization of the district shall serve for a term of one year, one-third for a term of two years, one-third for a term of three years, from the date the certificate of incorporation is filed of record in the office of the register of deeds of each county in which territory of the district is located. Such directors shall serve without compensation but shall be allowed actual and necessary expenses incurred in the performance of their official duties.

History: L. 1953, ch. 477, § 10; L. 1955, ch. 201, § 7; L. 1987, ch. 122, § 2; July 1.

24-1211: Election of directors at annual meeting; report of financial condition, projects and activities; notice and conduct of elections; vacancies; changes in number of directors or date of annual meeting; notice; procedure. In not less than 12 months, nor more than 13 months after the recording of the certificates of incorporation, and annually thereafter, a meeting shall be held for the election of directors whose terms expire and also to render a report on the financial condition and activities of the district including the estimated construction date of all proposed projects to be initiated within the next five years and the board's determination as to whether each of these projects is still cost effective and in the current public interest. Notice of the annual meeting shall be given at least 10 days prior to the date thereof by one publication in a

newspaper of general circulation in each of the counties of which said watershed district is a part. Elections shall be by ballot. Qualified voters in attendance shall be entitled to vote at any such meeting. The directors shall fill any vacancy occurring on the board prior to the expiration of the term of any director by electing a substitute director to serve for the unexpired term.

The number of directors of a district or the date of the annual meeting, or both, may be changed at an annual meeting if notice of the proposition of making such change or changes is given at the annual meeting immediately preceding the annual meeting at which such change or changes are considered. If the number of directors is proposed to be changed, the proposition shall be introduced in the same manner as other items of business and shall clearly show the changes in representation of sub-watersheds, if any, and in the length of terms of the directors. It shall be the duty of the board of directors to include the proposition in the notice of the annual meeting at which such changes are being considered. If a majority of those voting are favorable, the election of directors shall be in conformance with the adopted proposal and all powers shall be exercised by the newly constituted board beginning immediately after the annual meeting. Copies of the minutes of the annual meeting and report on the financial condition and activities of the district shall be furnished to the Kansas department of agriculture division of conservation.

History: L. 1953, ch. 477, § 11; L. 1955, ch. 201, § 8; L. 1959, ch. 172, § 9; L. 1961, ch. 193, § 9; L. 1987, ch.122, § 3; L. 2012, ch. 140, § 130; July 1

24-1212: Open meetings of directors; notice; quorum. Regular meetings of the board of directors shall be held no less than once each quarter on such day and place as is selected by the board of directors. Notice of such meeting shall be mailed to each director at least five days prior to the date thereof, and special meetings may be held at any time upon waiver of notice of such meeting by all directors or may be called by the president or any two directors at any time. Notice in writing, signed by the persons calling any special meeting, shall be mailed to each director at least two days prior to the time fixed for such special meeting. A majority of the directors shall constitute a quorum for the transaction of business and in the absence of any of the duly elected officers of the district a quorum at any meeting may select a director to act as such officer pro tem. Each meeting of the board, whether regular or special, shall be open to the public. Copies of the minutes of regular and special meetings shall be furnished to the Kansas department of agriculture division of conservation.

History: L. 1953, ch. 477, § 12; L. 1987, ch. 122, § 4; L. 2012, ch. 140, § 131; July 1

24-1213: General plan, estimate of costs and information as to benefits; transmittal to chief engineer, when; open to public; report to directors. Upon the incorporation of the watershed district the board shall cause work to be commenced on the preparation of a general plan of the district. In addition to the general plan there shall be prepared an estimate of costs as to installation, maintenance and operation of the proposed works and information as to the location and extent of areas that would be benefited by the proposed works. Upon completion of the general plan, estimates of costs and the information as to benefited areas, the board shall carefully examine and consider the same and if they approve the general plan, estimate of cost of proposed works and information on benefited areas, they shall transmit a complete copy thereof to the chief engineer and additional copies shall be made available to him upon request. Copies of such plans, estimates and information in the office of the chief engineer shall be open to inspection by the public at all reasonable times. The chief engineer shall examine and study said general plans as to:

- 1) Feasibility.
- 2) Co-ordination of the plan with any general plan for the watershed of which the district might be a part.
- 3) The safety of the works and improvements proposed.
- 4) Conformity with the intents and purposes of this act. The chief engineer shall transmit a written report of the results of his study and investigation to the board of directors which shall include any changes or modifications which he deems necessary and which shall include a specific approval or disapproval of the general plan.

History: L. 1953, ch. 477, § 13; L. 1957, ch. 226, § 6; L. 1961, ch. 193, § 10; July 1.

24-1214: Financing proposed projects; methods; resolution as to costs; public hearing; notice, contents; appearances; written statement required; transmittal of written statements to chief engineer; adoption, modification or rejection of general plan or method of financing; official general plan and official method of financing; resubmissions, when.

Subject to the provisions of subsection of K.S.A. 24-1203a, when the general plan is approved by the chief engineer the board, by resolution, shall propose that the cost to the district of all works contemplated in the plan be paid either by a general levy against all of the taxable tangible property located within the district, that such cost be paid by special assessment against lands within the district to be specially benefited by any of the proposed projects or that such cost be paid by both such general levy and special assessment, stating the portion proposed to be paid by each method. The board shall also set forth in the resolution any proposal to issue improvement bonds of the district to provide for the payment of all or any part of the cost to the district of proposed projects by installments instead of levying the entire tax or special assessment at one time.

The board shall thereupon fix a time and place either within or conveniently near the district for a public hearing upon the general plan and the resolution proposing a method of financing costs of the works contemplated in the plan. A notice of such hearing shall be given by one publication at least 20 days prior to the date fixed for the hearing, setting forth the time and place of hearing upon the plan and resolution, that a copy of the plan and resolution is available for public inspection in the office of the secretary of the district and that any electors or landowners desiring to be heard in the matter must file, in duplicate, with the secretary of the board at the secretary's office, at least five days before the date of the hearing, a written statement of their intent to appear at the hearing and the substance of the views they wish to express. Upon receipt of any such statements the secretary of the board shall immediately transmit one copy of the statements to the chief engineer. The chief engineer or the chief engineer's duly appointed representative may attend the hearing. At the hearing any elector or landowner who has duly filed a written statement shall be heard and may present information in support of the elector's or landowner's position in the matter. After hearing all such statements the board, by resolution, shall adopt as official or reject the general plan and adopt as official or reject the proposed method of financing costs of the works contemplated in the plan or determine that the general plan or the proposed method of financing or both should be modified and notify the chief engineer of the board's action. If it is determined that the general plan should be modified, any proposed changes approved by the board shall be incorporated in a modified general plan which shall be submitted to the chief engineer for further consideration.

The chief engineer shall review the modified plan and shall transmit a supplemental written report of the results of the chief engineer's study and investigation to the board, including the chief engineer's written approval or disapproval of the modified general plan. If the modified general plan is approved by the chief engineer, the board, by resolution, shall adopt the modified

plan as the official general plan of the district and notify the chief engineer of the board's action. If it is determined that the proposed method of financing should be modified, the board shall give consideration to the modified method of financing and, following adoption of the general plan or an approved modification thereof, the board, by further resolution setting forth such modified method of financing, shall adopt it as the official method of the district for financing costs of the works contemplated in the official general plan. If a board is unable to carry out a general plan because of disapproval of a bond issue at an election or because insufficient funds have been provided, they may reconsider the general plan or the method of financing, or both, and by following the procedure hereinbefore set forth, resubmit a general plan or method of financing, or both.

History: L. 1953, ch. 477, § 14; L. 1961, ch. 193, § 11; L. 1995, ch. 210, § 9; May 4.

24-1214a. Districts adopting general plan prior to April 1, 1961; method of financing; procedure. Watershed districts which have adopted a general plan prior to April 1, 1961, but have not adopted by resolution a method of financing may follow the procedure set forth in sections 24-1213, and 24-1214 of the Kansas Statutes Annotated in the adoption of a resolution of financing and proceed forthwith to carry out the proposed works of improvements.

History: L. 1961, ch. 193, § 12; July 1.

24-1215: Approval of bond issue by qualified voters of district required; notice; election procedures; tax levies for financing costs; resolution, publication; protest petition; election. When any general plan and resolution of financing has been finally adopted by the board, in accordance with the procedure set forth in K.S.A. 24-1214 and said resolution provides that all or any part of the cost of the works of improvement is to be paid by the issuance of improvement bonds of the entire district, it shall be the duty of the board to submit the question of approval of said bond issue to an election of the qualified voters of the district. Notice of the time and place and the purpose for which such election is to be held shall be given by one publication at least twenty (20) days prior to the date fixed for such election. Except as hereinbefore provided, the said special election shall be held and conducted in the manner prescribed for conducting and holding elections by K.S.A. 24-1207.

If the resolution of financing provides that all or any part of the cost of the works of improvement is to be paid by the issuance of improvement bonds to be paid by special assessment against the lands especially benefited by such project the board of directors shall proceed to determine the particular lands within the district upon which special assessments are to be levied and it shall be the duty of the board to submit the question of approval of the bond issue to an election of the owners of said lands. Notice of the time and place and the purpose for which such election is to be held shall be given by one publication at least twenty (20) days prior to the date of such election. Except as hereinbefore provided the said election shall be held and conducted in the manner prescribed for conducting and holding elections by K.S.A. 24-1207: Provided, however, That if it is proposed to issue improvement bonds to be paid partially by the entire district and partially by lands especially benefited, it shall be the duty of the board of directors to submit each question of approval separately as hereinbefore set forth: Provided further, That if said resolution of financing proposes that all costs to the district shall be borne by a general tax levy and makes no provision for the issuance of bonds, and no election is thereupon held, it shall be the duty of the board to publish said resolution once in a newspaper of general circulation within the district and said resolution shall be in full force and effect thirty (30) days after said publication unless petitions signed by landowners of the district in a number in excess

of twenty percent (20%) of the landowners as determined by the verified enumeration filed with the petition for organization are filed with the secretary of the board. In the event such petitions are filed, it shall be the duty of the board to submit the question of adoption of said resolution to the qualified voters of the district. Notice of the time and place and the purpose for which such election is to be held shall be given by one publication at least twenty (20) days prior to the date for such election. Except as hereinbefore provided the said special election shall be held and conducted in the manner prescribed for conducting and holding elections by K.S.A. 24-1207.

History: L. 1953, ch. 477, § 15; L. 1955, ch. 201, § 9; L. 1957, ch. 266, § 7; L. 1959, ch. 172, § 10; L. 1961, ch. 193, § 13; July 1.

24-1216: Order and procedure as to specific projects; surveys, plans, specifications and estimates of costs; filing with secretary of board; open to inspection; transmittal of approved plans to chief engineer, when; review of general plan; revisions of plan; report by chief engineer, requirements.

- (a) Following the adoption of the general plan and adoption of the method of financing, the board of directors may determine the order in which specific projects contemplated by the general plan shall be undertaken and to cause accurate surveys of all work deemed necessary to be done and accurate estimates and calculations to be made by some competent engineer who shall prepare detailed construction plans and specifications therefor showing the location, amount, and character of work to be done and the estimated cost of right of way, construction, maintenance and operation, which plans, specifications, and estimates of costs shall be filed in the office of the secretary of the board and shall at all reasonable times be open to public inspection. The board shall carefully examine and consider the same and if they approve such plans, specifications and estimates of costs, they shall transmit a complete copy thereof to the chief engineer, who shall examine and study the plans and specifications as to conformance to the general plan and other applicable state laws on water use and control and transmit a written report of the results of his study and investigation to the board which report shall include any changes or modifications which he deems necessary and which shall include a specific approval or disapproval of the plans and specifications.
- (b) Ten years following approval of the general plan and every five years thereafter, the board shall review the general plan to determine if projects proposed to be undertaken by the district in its original plan are still feasible and in current public interest. A report of the review shall be given at a public meeting called for that purpose. This review is not required of watershed districts that have completed all the projects in the general plans. Any revisions or amendments to the general plan shall be submitted to the chief engineer in the manner provided by K.S.A. 24-1213 and amendments thereto.

History: L. 1953, ch. 477, § 16; L. 1955, ch. 201, § 10; L. 1958, ch. 12, § 6 (Special Session); L. 1959, ch. 172, § 11; L. 1961, ch. 193, § 14; L. 1987, ch. 122, § 5; July 1.

24-1217: Computation of special assessments; appraisalment and apportionment; resolution; limitations; hearing of complaints; notice; alterations; resolution fixing assessments; notice to landowners; bonds and levies, when. If the resolution of financing provided for by K.S.A. 24-1216 [*], and amendments thereto, provides that all or any part of the cost of the works contemplated is to be paid by special assessment against lands especially benefited by such project, the board shall appoint three appraisers who have no vested interests in the project and who shall recommend apportionment of the special assessment to the tracts of land subject to such special assessment. The appraisers shall have access to all available

engineering reports and data pertaining to the works contemplated and may request such additional engineering data or counsel as found necessary to carry out their duties. The appraisers shall take an oath to fairly and impartially appraise the benefits accruing to each tract of land and shall recommend the apportionment of the assessment according to the relative benefits to be received by the several tracts of land subject to assessment and shall make written reports of their findings to the board.

Upon receiving the report, the board shall prepare a resolution which shall contain a list of the tracts of land found to be especially benefited and the amount of assessment to be levied against each such tract. No such assessment against any tract of land shall exceed the estimated benefits to such land by such project. Such tracts of land shall be legally described, and the names of the owners thereof shall be set forth beside the description of each tract so listed. After adopting such resolution, the board shall fix a time and place for hearing any complaint that may be made as to the benefit to any tract of land appraised as aforesaid, a notice of which hearing shall be given by the secretary by one publication at least 10 days prior to the date set for the hearing. The board, at the special hearing, may alter the benefit to any tract of land if, in its judgment, the same has been appraised too high or too low.

The board, immediately thereafter, shall pass a resolution fixing the benefit assessment as to each tract of ground and providing for the assessment thereof which assessment may be spread over a period of not to exceed 20 years and shall hold good for all installments. The board, immediately thereafter, shall cause a written notice to be mailed to the owner or owners of each tract of ground assessed of the amount of the assessment which notice shall state that if the amount is not paid in full within 30 days from the date of notice, bonds will be issued and that an assessment will be levied annually against such tract of ground for a period of not to exceed 20 years in an amount sufficient to pay the total assessment plus the interest due on the bonds. No suit to set aside the assessment shall be brought after the expiration of 90 days from the date of the notice. The amount levied against each tract of ground to pay for the bonds falling due each year and the interest thereon shall be levied, certified to the proper county clerk and collected the same as other taxes.

History: L. 1953, ch. 477, § 17; L. 1955, ch. 201, § 11; L. 1957, ch. 226, § 8; L. 1959, ch. 172, § 12; L. 1961, ch. 193, § 15; L. 1987, ch. 122, § 6; July 1.

24-218: Right of entry upon lands in connection with work of district; damages. The board of directors and its representatives and employees, including engineers and contractors and their employees, shall have the right and authority to enter upon private lands within or without the boundaries of the district for the purpose of conducting tests, surveys and other work incidental to the preparation of plans, maps, profiles and reports in connection with any work or proposed work of the district. The district shall be liable for any damages caused by such entry. Charges for damages shall be approved, modified, or rejected within 60 days following receipt of a documented accounting of such damages.

History: L. 1953, ch. 477, § 18; L. 1987, ch. 122, § 7; July 1.

24-1219. No-fund warrants for initial expenses; annual tax levies for general fund expenses; increased levies, procedure; tax levies for no-fund warrants and bonds; structure maintenance fund. (a) The district board may issue no-fund warrants to pay for initial organizational, engineering, legal and administrative expenses of the district except that the amount so issued shall not exceed the product of two mills times the assessed valuation of the taxable tangible property within the district. Such warrants shall be issued, bear interest and be

retired in accordance with the provisions of K.S.A. 79-2940, and amendments thereto, except that the approval of the state board of tax appeals shall not be required. Whenever warrants have been issued under this section, the board shall make a tax levy at the first tax levying period, after such warrants are issued, sufficient to pay such warrants and interest.

(b) Following incorporation of the district by the secretary of state, the board shall have authority to levy annually a tax of not to exceed two mills to create a general fund for the payment of engineering, legal, clerical, land and interests in land, installation maintenance, operation and other administrative expenses and such tax may be against all of the taxable, tangible property of the district. Whenever the board desires to increase the mill levy for such purposes above two mills, it may adopt a resolution declaring it necessary to increase such annual levy in an amount which together with the current levy shall not exceed a total of four mills. Any such resolution shall state the total amount of the tax to be levied and shall be published once each week for two consecutive weeks in a newspaper of general circulation in the district. Whereupon such annual levy in an amount not to exceed the amount stated in the resolution may be made for the ensuing budget year and each successive budget year unless a petition requesting an election upon the proposition to increase the tax levy in excess of the current tax levy, signed by not less than 5% of the qualified electors in the district is filed with the county election officer within 60 days following the date of the last publication of the resolution. In the event a valid petition is filed, no such increased levy shall be made without such proposition having been submitted to and having been approved by a majority of the qualified electors voting at an election called and held thereon. All such elections shall be called and held in the manner prescribed for the calling and holding of elections upon the question of the issuance of bonds under the general bond law.

(c) There is hereby authorized to be established in the watershed districts of the state a fund which shall be called the structure maintenance fund. The fund shall consist of moneys deposited therein from funds received according to provisions of the watershed district law. The amount of funds that may be deposited annually shall be a maximum of 0.35% of the construction cost of the structure. Moneys in the structure maintenance fund may be used for the purpose of engineering, reconstruction and other required maintenance and other expenses relating to the maintenance of a structure. The watershed board of directors is hereby authorized to invest any portion of the structure maintenance fund, which is not currently needed, in investments authorized by K.S.A. 12-1675, and amendments thereto. All interest received on any such investment shall be credited to the structure maintenance fund.

(d) The district board shall have authority to levy a tax, after improvement bonds have been issued in accordance with K.S.A. 24-1214, 24-1215 and 24-1220, and amendments thereto, sufficient to pay such bonds and interest.

History: L. 1953, ch. 477, § 19; L. 1955, ch. 201, § 12; L. 1961, ch. 193, § 16; L. 1985, ch. 117, § 1; L. 1987, ch.122, § 8; L. 1990, ch. 119, § 1; L. 2008, ch. 109, § 56; L. 2014, ch. 141, § 50; July 1

24-1220: Improvement bonds for works of improvement; terms; how payable; limitation on bonded indebtedness. Whenever improvement bonds have been authorized for any works of improvement in accordance with the provisions of K.S.A. 24-1214 and 24-1215, the board shall proceed to issue improvement bonds of the district. Said bonds shall be issued to mature in not more than thirty (30) annual installments of approximately equal amounts each year over a period of not to exceed thirty (30) years. Said bonds shall bear interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, payable semi-annually or at such time as may be fixed by the terms of the resolution authorizing the issuance thereof.

Each bond shall specify the date of its separate maturity and shall be in such denominations as the district board shall determine, but at no time shall the aggregate bonded indebtedness of the district exceed ten percent (10%) of the assessed valuation of all of the taxable tangible property within the district as shown by the last finding of the proper board of equalization.

History: L. 1953, ch. 477, § 20; L. 1955, ch. 201, § 13; L. 1957, ch. 226, § 9; L. 1961, ch. 193, § 17; L. 1970, ch. 64, § 71; L. 1978, ch. 99, § 30; April 25.

24-1221: Act supplemental to other laws. This act shall be deemed to be supplemental to existing laws relating to drainage districts, flood control, irrigation, soil conservation and related matters.

History: L. 1953, ch. 477, § 21; June 30.

24-1222. Chief engineer authorized to transfer territory from one district to another, when; petition. The chief engineer of the division of water resources shall have power upon a proper petition being presented for that purpose to transfer territory from one watershed district, organized and incorporated under the provisions of article 12 of chapter 24 of the Kansas Statutes Annotated or any amendments thereto, to any other adjacent watershed district so organized and incorporated.

History: L. 1958, ch. 12, § 1 (Special Session); May 8.

24-1223. Same; contents of petition. The petition for transfer of territory from one watershed district to another shall be addressed to the chief engineer of the division of water resources and shall: (a) Describe the territory to be transferred by section numbers and fractions thereof, and other platted areas as appropriate; (b) state from what watershed district and to what watershed district such transfer is sought; (c) show that the proposed transfer has been recommended by each of the watershed districts affected by resolution duly adopted by the board of directors of each district; and (d) state that the proposed transfer of territory will result in more efficient operation of both districts and will be conducive to the public convenience and welfare. Such petition shall contain a prayer that the territory described therein be transferred from one watershed district named therein to another watershed district named therein.

History: L. 1958, ch. 12, § 2 (Special Session); May 8.

24-1224: Same; presentment of petition to chief engineer; notice and hearing. Whenever a petition in conformity to K.S.A. 24-1223 signed by the board of directors of both of the affected watershed districts shall be presented to the chief engineer of the division of water resources, it shall be the duty of the chief engineer forthwith to fix a time for the hearing of such petition and to give notice thereof which shall be published by the affected watershed districts at their expense at least five (5) days before the date fixed for the hearing in one or more newspapers published and of general circulation in the county or counties in which the affected watershed districts are located.

History: L. 1958, ch. 12, § 3 (Special Session); May 8.

24-1225: Same; findings, decisions and declarations of chief engineer. At the time set for the hearing of the petition, as provided in K.S.A. 24-1224, it shall be the duty of the chief engineer

to first ascertain and determine whether notice has been given of the time of hearing, as required by this act, and, if it shall be determined that such notice has been given, to make a declaration and finding of this fact; and thereupon he shall hear all persons in favor of, or opposed to, the granting of the prayer of said petition, and he shall hear all other evidence that he may deem necessary for the purpose of ascertaining whether the statements in said petition are true; and, if upon such hearing it shall be found that such petition is in conformity to the requirements of this act and that the allegations thereof are true, then the chief engineer shall make a finding and decision to that effect and shall thereupon declare the territories described in the petition to be detached from the one watershed district, naming it, and to be attached to the other watershed district, naming it, and shall fix the date that such transfer shall become effective; and if the chief engineer upon such hearing finds that such petition is not in conformity to this act, or that the statements in such petition are not true, or that said transfer should not be made, then he shall make a finding and decision to that effect and reject that petition. Such affirmative decision and order of the chief engineer may provide for the transfer of all or part of the territory described in the petition but shall not include any territory not so described.

History: L. 1958, ch. 12, § 4 (Special Session); May 8.

24-1226: Same; liability for outstanding bonded indebtedness. The balance of bonded indebtedness including temporary notes outstanding shall remain a charge upon the territory transferred under the provisions of this act in accordance with the applicable provisions of K.S.A. 10-119, and any amendments thereto. The territory so transferred shall not be liable for any bonded debt including temporary notes and no-fund warrants existing at the time of such transfer of the district of which it shall become a part.

History: L. 1958, ch. 12, § 5 (Special Session); May 8.

24-1227: Extension of territory of district; petition, contents; approval of chief engineer. The secretary of state, with the approval of the chief engineer of the division of water resources, shall have power, upon proper petition being presented for that purpose to extend the territory of any watershed district organized and incorporated under the provision of article 12 of chapter 24 of the Kansas Statutes Annotated or any amendments thereto. The petition to extend the territory of any watershed district shall be addressed to the secretary of state, and shall: (a) Describe the territory to be annexed by section numbers and fractions thereof, and other platted areas as appropriate, except as provided for in K.S.A. 24-1205, as amended for the inclusion of incorporated cities; (b) state to what watershed district annexation is sought; (c) have a map attached thereto as an exhibit, and incorporated therein by reference, showing said watershed district and the lands proposed to be annexed; and (d) show that the proposed extension of territory has been recommended by the watershed district concerned by resolution duly adopted by its board.

The petition shall be circulated, signed, filed and transmitted in the manner prescribed for the original organization of a watershed district in K.S.A. 24-1203, 24-1205, 24-1206, and 24-1207, or any amendments thereto, and similar action shall be taken as prescribed in said section 24-1206, in so far as same is applicable.

History: L. 1961, ch. 193, § 18; July 1.

24-1228: Dissolution of district, when; resolution; petition; election; certificate of dissolution. Whenever a watershed district has been organized and incorporated under the

provisions of article 12 of chapter 24 of the Kansas Statutes Annotated, and amendments thereto, for more than eight years and has not adopted a general plan of work and projects to be undertaken by the district, constructed or contracted to construct any works of improvement or incurred any continuing obligations for maintenance of any works of improvement, or when such a district has been organized and incorporated under such provisions for more than four years and has not made substantial progress toward a general plan of work and projects to be undertaken by the district, the board of such district may, by resolution adopted by a 2/3 vote of all members of such board present and voting, but in no event less than a majority of all members of such board at a special meeting of such board called for that purpose, and notice of which special meeting shall specify the purpose for which the meeting is to be called, provide for the calling of an election of the qualified voters of such district for the purpose of determining whether such district shall be dissolved; and the board shall provide for the calling of such an election if written petitions therefor signed by 20% of the landowners of such district, as shown by a verified enumeration of such landowners by a landowner of such district, are filed with the secretary of such board. Notwithstanding any provision of this section, the Middle Creek joint watershed district No. 50 may be dissolved in the same manner and procedure as provided herein.

The election to determine whether the district shall be dissolved shall be held and conducted in the same manner as provided by K.S.A. 24-1207, and amendments thereto, insofar as such provisions can be made applicable. If a majority of those voting on the proposition voted in favor of dissolution of the district, the board shall immediately certify the results of such election to the secretary of state, and the secretary of state shall thereupon issue and deliver to the secretary of such board a certificate of dissolution.

History: L. 1961, ch. 193, § 19; L. 1982, ch. 153, § 1; L. 2000, ch. 115, § 3; July 1.

24-1229: Dissolution of portion of district; petition, contents; powers and duties of chief engineer; notice and hearing; evidence; findings, filing; certificate of dissolution; recordation; removal of director upon dissolution, effect. The chief engineer of the division of water resources shall have power upon proper petition being presented for that purpose to dissolve a portion of a watershed district organized and incorporated under the provisions of article 12, chapter 24 of the Kansas Statutes Annotated, or any amendments thereto. The petition for dissolution of a portion of a watershed district shall be addressed to the chief engineer of the division of water resources and shall: Describe the territory to be dissolved by section numbers and fractions thereof and other platted areas as appropriate; contain a prayer that the territory described therein be dissolved from the watershed district, naming it; show that the dissolution is being sought by either a majority of the board of the watershed district or a majority of the landowners in the territory to be dissolved. Whenever a petition in conformity with this section is received by the chief engineer it shall be his duty forthwith to fix a time for the hearing of such petition and to give notice thereof which shall be published by the affected watershed district at their expense at least five (5) days before the date fixed for the hearing. It shall be the duty of the petitioners to show satisfactory evidence in support of the requested dissolution.

If after such hearing the chief engineer finds that the exclusion of territory described in the petition would leave within the district an area in conformance with the findings considered for the organization of a district as prescribed in K.S.A. 24-1206 and that the exclusion of the territory described in the petition will not substantially impair the effectiveness of a general plan of the district which has been approved by the chief engineer, he shall transmit a written report of his findings on the petition, together with his written approval or disapproval of the petition, to the secretary of state and the secretary of the board. Upon receipt of such report and approval of

the petition the secretary of state shall thereupon issue and deliver to the secretary of the board a certificate of dissolution as to the lands which are to be excluded from the district fixing the effective date of such dissolution. A certified copy of the certificate of dissolution shall be recorded in the office of the register of deeds of each county in which any portion of the district is located: *Provided*, That, if the dissolution of a portion of the territory of a watershed district removes one or more directors from the constituted board, the remaining board of directors shall exercise the powers granted by this act until such time as changes in the board are proposed and effected in a manner prescribed by K.S.A. 24-1211.

History: L. 1961, ch. 193, § 20; July 1.

24-1230: Notification of directors upon dissolution or partial dissolution of district; duties of secretary, treasurer and directors; effective date of dissolution; recordation of certificate of dissolution. Upon receipt from the secretary of state of the certificate of dissolution of the watershed district or portion thereof under the provisions of this act, the secretary of the board of directors of said watershed district shall notify the directors of the watershed district of such certification.

The directors shall immediately pay all obligations of said district or portion thereof, including all costs incurred by the district, the chief engineer and secretary of state in regard to the dissolution proceedings, and the treasurer shall thereupon distribute all moneys in his hands belonging to the district or portion thereof in the manner prescribed by this act, and immediately after making such distribution, the treasurer shall notify the secretary of such distribution. Upon receipt of such notification, the secretary of the district shall have the certificate of dissolution published once in a newspaper of general circulation, located in the county wherein the registered office of said watershed district is located, and proof of such publication shall be filed in the office of the secretary of state. The effective date of the dissolution, unless otherwise provided, shall be the date on which the proof of publication is filed in the office of the secretary of state, but in no event shall the date of dissolution be a date prior to the date of publication of the certificate of dissolution. A certified copy of said certificate of dissolution of said district or portion thereof shall also be recorded in the office of the register of deeds of each county in which any portion of the dissolved district is located.

History: L. 1961, ch. 193, § 21; July 1.

24-1231: Disposition of funds of totally or partially disorganized district; duties of treasurer. Any funds of a watershed district which is totally disorganized and dissolved under the provisions of this act shall be apportioned and paid to the townships or cities located within or partly within the watershed district in the proportion which the assessed valuation of property in said watershed district located within the township or city bears to the total assessed valuation of the watershed district, based on equalized assessed valuations for the preceding year. Any funds of any watershed district which is partially disorganized and dissolved by the provisions of this act shall be apportioned and paid to the township or cities located within or partly within the dissolved portion of said watershed district and retained by the remaining portion of said watershed district in the proportions which the assessed valuation of property in the dissolved portion of said watershed district located within the township or city and the assessed value of property in the undissolved portion of said watershed district bear to the total assessed valuation of the watershed district based on equalized assessed valuations for the preceding year. The watershed district treasurer, upon notification of receipt of a certificate of dissolution, shall immediately pay the amounts due each township or city or part thereof located within the district

or the dissolved portion of said district to the treasurer of the township or to the city treasurer, as such township or city may be entitled to receive.

History: L. 1961, ch. 193, § 22; July 1.

24-1232: Minutes and records of totally dissolved district filed with county clerk. The secretary of any watershed district totally disorganized and dissolved under the provisions of this act shall file all minutes and records of said district with the county clerk of the county wherein the registered office of said watershed district is located.

History: L. 1961, ch. 193, § 23; July 1.

24-1233: Districts established prior to July 1, 1961; confirmation and validation; procedure. Whenever any watershed district has heretofore been created and established under the watershed district act and all amendments thereto, the chief engineer shall fix a time for a hearing upon the question of whether the lands within the district so created and established, or a part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water, and shall give notice thereof at the expense of the district for three consecutive weeks in a newspaper or newspapers of general circulation within the district, the last publication to be at least five days before the day fixed for the hearing.

Such notice need not describe the boundaries of the district as previously created and established but shall state the name or general location thereof and shall state that a hearing will be held by the chief engineer on whether or not the lands within the district so created and established, or a part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water, shall state the day and hour of the hearing, and that all persons may appear before the chief engineer at such hearing and be heard. If, after such hearing, the chief engineer determines that the lands within the district so created and established, or a part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water, the public necessity of such district is hereby declared, and the creation and establishment of such district shall be and is hereby ratified, validated and confirmed.

History: L. 1961, ch. 193, § 3; July 1.

24-1234: Intermittent closing of roads within watershed district; county roads; permit application; authority and duties of board of county commissioners; publication and notice.

- (a) Upon application of the board of directors of any watershed district, the board of county commissioners of any county is hereby authorized to permit the intermittent closing of any county road located within the boundaries of such watershed district whenever in its judgment it is necessary to do so and when the road will be intermittently subject to inundation by flood waters retained by an approved watershed retention structure.
- (b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the board of county commissioners by the watershed district. The application shall specify the road involved and shall request that a permit be granted to the district to allow the intermittent closing of the road.

- (c) Upon receipt of such an application, the board of county commissioners shall give notice of the proposed action by publication once each week for two (2) consecutive weeks in a newspaper of general circulation in the county, and such notice shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition to such publication, the board of county commissioners shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notice to the offices of such public utilities or common carriers located within the county, or if no office is located within said county, then to the office of such utilities or common carriers located nearest to said county. Not sooner than three (3) days after the last publication and not sooner than fourteen (14) days after the mailing of such notice, such board may issue its permit with respect to such road.

History: L. 1974, ch. 270, § 1; March 8.

24-1235: Same; township roads; permit application; authority and duties of board of township trustees; publication and notice.

- (a) Upon application of the board of directors of any watershed district, the board of trustees of any township is hereby authorized to permit the intermittent closing of any township road located within the boundaries of such watershed district whenever in its judgment it is necessary to do so and when the road will be intermittently subject to inundation by flood waters retained by an approved watershed retention structure.
- (b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the board of trustees of the township involved by the watershed district. The application shall specify the road involved and shall request that a permit be granted to the district to allow the intermittent closing of the road.
- (c) Upon receipt of such an application, the board of trustees shall give notice of the proposed action by publication once each week for two (2) consecutive weeks in a newspaper of general circulation in the county, and such notice shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition to such publication, the board of trustees shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notice to the offices of such public utilities or common carriers located within the county, or if no office is located within said county, then to the office of such utilities or common carriers located nearest to said county. Not sooner than three (3) days after the last publication and not sooner than fourteen (14) days after the mailing of such notice, such board may issue its permit with respect to such road.

History: L. 1974, ch. 270, § 2, March 8.

24-1236: Same; county bridge and township road, 24-1234 applies; approval by board of township trustees. If a proposed intermittent closing involves both a county bridge and a township road, then application shall be made to the board of county commissioners, and K.S.A. 24-1234 but not K.S.A. 24-1235 shall apply thereto. The board of county commissioners shall not issue a permit under this section, until it has received a written approval thereof by the board of township trustees involved.

History: L. 1974, ch. 270, § 3; March 8.

24-1237: Same; costs of publication and notice; permit to require road markers. All costs in connection with the publication and the notice shall be paid by the watershed district. In event the county or township board issues a permit allowing the intermittent closing of the road, then the permit shall contain a provision that the watershed district will cause suitable markers to be installed on the road to advise of the intermittent closing of the road.

History: L. 1974, ch. 270, § 4; March 8.

Watershed Dam Construction Program Kansas Administrative Regulations

11-3-1. Definitions.

- a. “Appurtenant works” means the following:
 - 1) The primary spillway;
 - 2) other conduits through a dam;
 - 3) valves;
 - 4) the auxiliary spillway;
 - 5) the service spillway;
 - 6) the stilling basin;
 - 7) any constructed outlet channel;
 - 8) all dikes and berms designed and constructed to protect a dam;
 - 9) drains; and
 - 10) all other features constructed to protect or operate a dam.
- b. “Breach” means a gap or an opening in an embankment or auxillary spillway that results in the complete loss of reservoir storage.
- c. “Breach analysis” means an analysis performed by a licensed professional engineer to determine the areas that would be inundated if a dam failed.
- d. “Chief engineer” means the chief engineer, division of water resources, department of agriculture.
- e. “Commission” means the state conservation commission.
- f. “Decommissioning” means the removal of a dam, the appurtenant works, and the embankment.
- g. “Detention dam” means a single-purpose dam designed for the temporary storage of floodwaters and for the controlled release of those floodwaters.
- h. “District” means a watershed district, drainage district, or any other special-purpose district that has been organized and incorporated according to appropriate statutes and has the power to levy taxes and the power of eminent domain.

- i. “Embankment” means a dam's principal barrier made of earth or rock fill or a combination of earth and rock fill.
- j. “General plan” means a preliminary engineering report describing the characteristics of the project area, and the nature and methods of dealing with the soil and water problems within the project area. The general plan shall include maps, descriptions, and other data as necessary for the location, identification, and establishment of the scope of the work to be undertaken and any other relevant data and information that the chief engineer may require.
- k. “Grade stabilization dam” means a structure designed to control the erosion of a watercourse.
- l. “Hazard” means any situation that creates the potential for adverse consequences that may include loss of life, property damage, and any other adverse impact.
- m. “Inundation area” means the area below a dam that would be inundated with water as determined by conducting a breach analysis.
- n. “Operation and maintenance” means the actions or upkeep, or both, necessary for a dam to continue to function properly, including the following:
 - 1) Woody vegetation control;
 - 2) grass seeding;
 - 3) burrowing animal control;
 - 4) the repair of minor erosion, cracks, animal burrows, and minor settling;
 - 5) the care of pipes, piezometers, drains, valves, gates, and other mechanical devices;
 - 6) the replenishment and proper placement of riprap;
 - 7) the removal of debris from spillways; and
 - 8) any other actions necessary for upkeep.
- o. “Permit” means the formal document issued by the chief engineer or other issuing agency to the district authorizing the construction or rehabilitation of a project.
- p. “Project” means the construction or rehabilitation of a detention dam or grade stabilization dam.
- q. “Rehabilitation” means any work, except work required due to inadequate operation and maintenance, to extend the service life of a dam and to meet the applicable safety and performance standards.
- r. “Structure condition report worksheet” means a current physical assessment of a rehabilitation project on a form prescribed by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-2. Application for construction.

- (a) Any organized watershed district, drainage district, or other special-purpose district interested in state assistance may apply for state cost-share assistance funds

appropriated for the construction of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission. All applications shall be due at the commission office on or before April 1 to be included in the evaluation process for possible funding during the next fiscal year.

- (b) Each district submitting an application shall employ or acquire the services of a person knowledgeable of watershed dam construction administrative procedures, who shall be known as the contracting officer for the proposed site.
- (c) Each recipient of state cost-share assistance for construction shall submit an inundation area map before the final payment is made. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-3. Permit to construct or rehabilitate. Before the allocation of funds to any project and before any district advertises for bids, the district shall submit the following to the commission:

- (a) A copy of the permit to construct or rehabilitate, as issued by the chief engineer; and
- (b) an updated general plan. (Authorized by K.S.A. 2- 1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-4. Allocation of funds.

- (a) An evaluation of applications shall be made by the commission to determine the priority ranking for all proposed projects. In addition, an amount that is contingent on appropriations shall be determined for projects in each district and other dams as authorized by the legislature.
- (b) The maximum cost-share level for construction or rehabilitation costs, including engineering and inspection costs, shall be 80 percent. The maximum annual assistance per structure or district shall be \$120,000, except when uncommitted funds are available after all eligible structures have been funded. These uncommitted funds may be used to provide additional cost-sharing above the maximum limit. Assistance funds shall not be used for easements or administrative costs, except on rehabilitation projects if the commission determines that easements within the inundation area are the most cost-effective alternative.
- (c) The standard bidding procedures of the department of administration shall be used in the bidding process for approved applications for state assistance.
- (d) Adequate accounting and fiscal records shall be maintained by the district to reflect the receipts and expenditures of all funds of the project.
- (e) The district shall submit project documents and relevant information as required by the commission.
- (f) The district shall construct or cause the project to be constructed to final completion in accordance with the plans and specifications approved by the chief engineer. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-5. Contract.

- (a) Each contract shall be a fund- obligating document and shall include the contractual provisions required by the commission and the state.
- (b) Any contract not completed by the end of the fiscal year in which appropriation was made may be extended upon written request. (Authorized by K.S.A. 2-1904, K.S.A. 2004 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2004 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-6. Partial payments. Partial payments of appropriated funds shall be made to the district no more often than once each month. Each partial payment shall be requested on a form furnished by the commission. All partial payments shall be documented by construction or rehabilitation progress reports. (Authorized by K.S.A. 2- 1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-7. Notification of completion.

- (a) The district shall notify the commission and the chief engineer when the district's approved project is complete and ready for final inspection.
- (b) The notification to the commission shall include the following:
 - 1) The date of completion of the project; and
 - 2) an itemized list of all costs of the following:
 - a. Construction or rehabilitation; and
 - b. engineering inspections and geological investigations.
- (c) The district shall submit a request for final payment of state funds for the project on a form provided by the commission, after the issuance of the certificate of completion by the chief engineer. (Authorized by K.S.A. 2- 1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-8. Alterations to project plan. Each alteration of or change order regarding any original construction or rehabilitation plan shall require the prior approval of the chief engineer and notification to the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-9. Supplemental application procedures. Each supplemental request of funds for costs of construction or rehabilitation and engineering costs exceeding the approved funding shall be submitted on a form supplied by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-10. Inspection. The district shall conduct an annual operation and maintenance inspection of each completed new or rehabilitated state-funded structure and shall file an inspection report on a form provided by the commission. The district shall submit a copy of the inspection report to the commission and chief engineer. The district shall implement corrective maintenance or repair when needed. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch.

206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-11. Application for rehabilitation.

- (a) Any organized watershed district, drainage district, other special-purpose district, or other dam owner as authorized by the legislature that is interested in state assistance may apply for state cost-share assistance funds appropriated for the rehabilitation of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission.
- (b) Each applicant shall submit a letter of intent to the commission by July 1 for a specific rehabilitation project to be considered for funding in the next fiscal year. The letter of intent shall include the following:
 - 1) A preliminary rehabilitation design;
 - 2) a preliminary cost estimate for the rehabilitation;
 - 3) a cost estimate for a breach analysis;
 - 4) the hazard classification;
 - 5) and the structure condition report worksheet.

The chief engineer shall be notified upon commission receipt of all rehabilitation applications.

- (c) At the beginning of each fiscal year, each applicant shall be notified of the applicant's priority ranking by the commission. Each applicant with a priority ranking high enough to be selected for possible funding shall complete the detailed design, total cost, and financial assistance funding requirements using forms prescribed by the commission.
- (d) The components eligible for financial assistance for the dam and appurtenant works, inundation area delineation, or inundation area easements shall include the following:
 - 1) The engineering fees;
 - 2) the construction or repair of embankments;
 - 3) excavation;
 - 4) metal, concrete, and other components;
 - 5) breach of a dam;
 - 6) establishment of permanent vegetation;
 - 7) fencing;
 - 8) riprap or filter material;
 - 9) decommissioning;
 - 10) upgrade of a spillway;
 - 11) acquisition of inundation area easements;
 - 12) inundation area mapping; and
 - 13) any other components that the commission deems necessary.
- (e) Each request for financial assistance for any rehabilitation required because of deficient operation and maintenance shall receive the lowest priority for funding. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)

11-3-12. Application for financial assistance for inundation area mapping.

- (a) Any organized watershed district, drainage district, other special-purpose district, or other dam owner authorized by the legislature may apply for state financial assistance for inundation area mapping. Each application shall be submitted on a form prescribed by the commission.
- (b) Each application for financial assistance for inundation area mapping within a district shall include the following:

- 1) The identification of each person whose services will be employed to complete the map;
 - 2) an acknowledgement that the services specified in paragraph (b) (1) will be conducted by a licensed professional engineer; and
 - 3) a summary of how the district will use the inundation area map to encourage the prevention of future inundation area development.
- (c) Prioritization for funding shall include consideration of the following factors:
- 1) The applicant's plan for using the dam inundation map to encourage prevention of future inundation area development;
 - 2) the amount of funding provided by the district for each inundation area mapping application;
 - 3) any application that includes a strategic inundation area mapping plan. The plan shall include the district's prioritized mapping completion timelines to address inundation area mapping for all dams in the district; and
 - 4) other relevant criteria identified by the commission that mitigate hazards associated with watershed dams. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)

<h2 style="margin: 0;">Attorney General Opinions</h2>

1. Installment Purchases

- a. Attorney General Opinion No. 92-121: "The Decatur county soil conservation district does not have the authority to enter into a lease-purchase agreement that exceeds the current budget year."

COMMENT: The agreement must specifically state that the municipality (i.e. Conservation District) is obligated only to pay periodic payments or monthly installments under the agreement within the current budget year.

Note: See also AG Opin. No. 96-2

2. Elections-Voter Qualifications

- a. Attorney General Opinion No. 62-65:

Question 1: Who is eligible to vote in a Watershed District Improvement Bond Election which will be paid for by special assessment levied against land to be specially benefited by the improvement?

Answer: An eligible voter in such an election must be either a landowner, against whose land the special assessment will be assessed, and a qualified elector of the District: or a nonresident landowner against whose land the special assessment will be levied and over 18 years of age.

Question 2: Must a voter living in one county vote, vote in the polling place provided in that county, or may he vote at any polling place in the District?

Answer: He may vote at any voting place in the District.

Question 3: Where a person owns land in both counties in the District may he vote in either county?

Answer: He may vote at any voting place in the county.

COMMENT: The requirement that a qualified elector be over 21 years of age was changed in 1972; however, the rest of the opinion is still valid.

- b. Attorney General Opinion No. 77-93:

Qualified voters.

“A qualified voter” in an election for members of the Board of Directors of a Watershed District organized under K.S.A. 24-1201 et seq., is any qualified elector of the District, i.e., any registered voter of the District, and any person 18 years of age or over who owns land within the District, whether a registered voter or a resident of the District. K.S.A. 24-1211, K.S.A. 24-1202 (j).

c. Attorney General Opinion No. 82-43:

Quorum and abstention of board members.

"If a quorum of a municipal council is present and a majority of the members voting vote in favor of a particular matter, abstentions from voting are to be counted as acquiescence with the votes of the majority, and the action will bind the body. Abstentions from voting may not be counted as acquiescence where there is a tie vote and the proposition fails for a lack of a majority voting in favor thereof."

d. Attorney General Opinion No. 82-178:

Quorum and board member voting.

"In that a watershed district organized pursuant to K.S.A. 24-2101 et seq., is a quasi-municipal corporation, as a quorum may be established, and any votes taken by the board of directors, only with those directors who are present, thus precluding the use of voting by proxy."

COMMENT: The point is made that only official members of a governmental body may be counted toward establishing a quorum and only votes cast by such members are acceptable in official actions of the body. Advisors are not, nor can they be designated as, official members of a governing body.

e. Attorney General Opinion No. 86-86:

Use of absentee ballots or voter proxy in election of directors.

"K.S.A. 1985 Supp. 24-1211, which provides for the election of directors of a Watershed District at an annual meeting, states that election shall be by ballot and that qualified voters shall be entitled to vote at any such meeting. Said statutory language does not authorize absentee ballots to be voted at said meeting nor does it authorize the use of proxy voting."

f. Attorney General Opinion No. 88-51:

Formation of watershed district- elections; qualified voters.

"The definition of qualified voter found in K.S.A 24-1202 (j) creates two categories of those qualified to vote under the Watershed District Act, K.S.A 24-1201 et seq. First, any person who is a registered voter in the district and second, any person eighteen years or older who owns land within the district, whether or not a registered voter or a resident of the district. As to the second category of qualified voters those 18 or over owning land), a landowner is defined by K.S.A. 24-1202 (k) as the record owner of the fee. As such, a landowner does not include a spouse whose name is not on the title even though the spouse has an interest in the realty under Kansas marital property statutes. However, there is generally nothing to prevent the record owner from deeding the title to himself and his spouse in some form of co-ownership thereby making the spouse a record owner."

g. Attorney General Opinion No. 93-85:

Certification of elections by the secretary of state.

The secretary of state does not possess the authority to determine whether the procedure for establishing a watershed district has been properly followed. Therefore, once the secretary of state has received certification from the board of directors of a watershed district showing that a majority of persons voting on the proposition regarding the establishment of a watershed district voted in favor of such proposition, the secretary of

state must issue a certificate of incorporation to the board of directors. The legality of the district formed may be challenged after the incorporation certificate is issued.

h. Attorney General Opinion No. 94-36:

Proof of qualified elector status.

In an election to approve a tax levy increase, a watershed district formed pursuant to K.S.A. 24-1201 et seq., must determine who is a landowner for purposes of establishing "qualified elector" status. By statute, the tax rolls establish satisfactory evidence of title when furnished by the county clerk as a record of ownership. When, however, a qualified landowner's identity appears as et ux., et vir. or et al. on the tax rolls, the election judge may challenge such voter's qualifications using the general conduct of election laws found at K.S.A. 25-407 et seq. If challenged, the landowner must establish the right to vote by presenting a copy of the recorded deed identifying the person as a landowner.

[TK[2]

3. Liability for Official Acts

[TK[3]a. Attorney General Opinion No. 82-173:

Board member immunity.

"A watershed district organized pursuant to K.S.A. 24-1201 et seq., is governed by a board of directors selected under K.S.A. 24-1211. An individual of such board is immune from personal liability for injuries to private individuals resulting as a consequence of his or her official acts."

4. General Powers, Budget and Taxes

a. Attorney General Opinion No. 76-22:

Use of funds.

"K.S.A. 24-1209, tenth, authorizes watershed districts organized under the Watershed District Act, K.S.A. 24-1201 et seq., to pay funds for membership in cooperative associations of watershed and drainage districts which are organized to further the purposes of member districts

b. Attorney General Opinion No. 77-85:

Budgeting procedures-tax lid.

"Budgeting procedures of watershed districts are not subject to the tax lid requirements of K.S.A. 79-501 et seq."

c. Attorney General Opinion No. 82-79:

Cash basis exemption.

"K.S.A. 1981 10-116 b exempt certain agreements from the scope of the cash basis law...among such agreements are lease-purchase agreements where the municipality is obligated only to make periodic payments from the funds appropriated for that purpose, either from the current budget or from other revenue sources."

d. Attorney General Opinion No. 83-20:

Financing proposed projects; special assessments.

"The Board of Directors of a watershed district organized pursuant to K.S.A. 24-1201 et seq., may pay for works of improvement by making special assessments against lands especially benefited by such project, with such assessments used to pay off improvement bonds issued by the district. Prior to doing so, the board must submit the question of approval of the bond issue to an election, said election involving only the owners of the land so benefited and assessed. While the making of such special assessments accordingly can be limited to a particular sub-district, the same is not true of a levy under

K.S.A. 24-1219 for general improvement bonds, which must be spread over the entire district.”

e. Attorney General Opinion No. 83-36:

Retention of counsel for tax planning matters.

“A watershed district organized pursuant to K.S.A. 24-1201 et seq., is empowered to execute such contracts as necessary or convenient to allow it to properly carry out its functions, and to obtain those professional services deemed essential by the Board of Directors. In acquiring easements by donation from landowners, the Board of Directors may employ the services of an attorney for the performance of duties relevant to drafting of the easement. However, apart from acting as scrivener an attorney should not provide advice to the donor as to the tax considerations involved or represent the donor in proceedings before the Internal Revenue Service, nor should public monies of the district be expended to compensate the attorney except for these limited services.”

f. Attorney General Opinion No. 86-117:

Retention of counsel for tax planning matters.

“When acquiring easements for donation from landowners, the board of Directors may employ the services of an attorney or attorneys to perform duties relevant to the drafting of easements. However, the district may not expend public monies to reimburse a landowner for reasonable cost associated in defending claimed deductions for donated easements.”

g. Attorney General Opinion No. 87-85:

General powers and duties of district-use of watershed district funds.

“To comply with Article 11, Section 5 of the Kansas Constitution, Watershed District funds levied under K.S.A. 24-1219 must be spent for the purpose for which they are levied. The improvement and maintenance of a township road for recreational purposes is not in appropriate use of watershed district general fund revenue under K.S.A. 24-1219. Further, a watershed district may not exercise power through an interlocal agreement if it does not already possess that power on its own.”

h. Attorney General Opinion No. 92-102:

Project sales tax exemption certificate.

“Pursuant to K.A.R. 92-19-66a, purchases made without first obtaining a project exemption certificate are not entitled to sales tax exemption under K.S.A. 1991 Supp. 79-3606d as amended.”

i. Attorney General Opinion No. 92-116:

Establishment of maintenance fund.

“Subsection (c) of K.S.A. 1991 Supp. 24-1219 authorizes the creation of a structure maintenance fund. A watershed district board may create the fund by passing a resolution. The statute authorizes annual deposits of funds; it does not authorize back funding generally or for years that a structure has been in existence before the creation of the fund.”

j. Attorney General Opinion No. 93-76

Authority to condemn an existing conservation easement.

The uniform conservation easement act provides the specific statutory authorization and evidences a clear legislative intent to give precedence to the utilization of water resources by a watershed district. Accordingly, a watershed district has specific statutory authority to substantially interfere with or destroy the existing public use of a conservation easement provided to an agency over property upon which watershed structures are to be located.

k. Attorney General Opinion No. 98-52

Authority to administer and cost share water quality projects.

Watershed districts are governed by the Watershed District Act and created to correct the problems resulting from erosion, flood waters, sediment damage and the general instability of natural water supplies. Specifically relevant to our question, a watershed district is authorized to "construct, improve, maintain and operate works of improvement including such facilities and appurtenances as necessary for the conservation of soil . . . development and utilization of water. . . ." (2) The utilization of buffer strips and riparian area repair to improve water quality alleviate flood water and sediment damage and, in our opinion, fall within the authorized expenditures set forth in K.S.A. 24-1209. The District's authority to expend funds for this purpose is further supported by the District's inclusion of pollution control and land treatment as part of its objectives in its modified general plan approved by the Chief Engineer in accordance with K.S.A. 1997 Supp. 24-1214. In regard to the District's authority to cost-share the water quality projects within the District, K.S.A. 24-1209 Tenth, authorizes the District to "cooperate and contract" with other entities and, in our opinion, includes the authority to engage in cost-sharing for improvement projects that were included by the District in their general plan.

l. Attorney General Opinion No. 2006-06

Taxing authority against property located outside the district boundaries.

K.S.A. 24-1201 *et seq.* contain several statutes authorizing a watershed district to tax or assess property located within the district in order to pay for certain costs. These costs may include expenses incurred for dam maintenance, improvements to existing dams, or building new dams within the district. The correct procedures to be followed depend upon the statutory authority being utilized to make such assessments. However, property that lies outside the district is not subject to the taxing or assessment authority of a watershed district board, even if such property eventually benefits from a watershed district project.

5. Open Meetings

a. Attorney General Opinion No. 80-173:

Telephone meetings.

"A telephone conference call among members of a public body may constitute a meeting of such body, where the numbers of members engaged in such call is sufficient by statute to transact the business of the body, and so long as all members thereof are notified of the conference call and given the opportunity to participate. Meetings held pursuant to telephone conference calls are subject to the Open Meetings Act where such calls involve a majority of a quorum of the public body's membership, even though the number of members involved is not enough to transact the business of the public body."

b. Attorney General Opinion No. 81-262:

Informal meetings.

"Informal gatherings of a majority of a quorum of a city commission to discuss city business, held prior to, during or immediately following regularly scheduled meetings, are subject to the requirements of the Kansas Open Meetings Act."

COMMENT: This opinion was not rendered to a watershed district. However, districts are subject to the Kansas Open Meetings Act.

c. Attorney General Opinion No. 82-16:

Use of memoranda.

"The KOMA does not prohibit the use of written memoranda between members of a public body subject to the act. However, use of written documents at an otherwise public

meeting which effectively deny the public access to the decision-making process may constitute a violation of the KOMA..."

d. Attorney General Opinion No. 82-141:

Notice of meetings.

"The Kansas Open Meeting Act (KOMA) requires notice of all regular and special meetings of bodies subject to the act as provided to all persons requesting it..."

e. Attorney General Opinion No. 82-176:

Participation in executive sessions.

"A public body subject to the KOMA may not permit individuals or special interest groups, including members of the news media, to attend executive sessions as mere observers while excluding the public generally. Individuals may attend executive sessions of government bodies subject to the Act upon invitation where such persons are present to provide information to the body or participate in its deliberations, but may not attend merely as observers."

f. Attorney General Opinion No. 82-247:

Executive session – attorney-client privilege.

"K.S.A. 1981 Suppl. 75-4319 (b) authorizes legislative and executive bodies or agencies subject to the KOMA to conduct an executive session or recess for the purpose of consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship. However, the attorney-client privilege may not be invoked if the attorney is not present, or if persons, other than the attorney and his or her agents, are parties to the communication. Moreover, the communication must be confidential in character and be so regarded by the governmental body or agency."

g. Attorney General Opinion No. 84-103:

Meeting notification requirements.

"A meeting called by the mayor of a city would not come under the scope of the Kansas Open Meetings Act if it were attended by single representatives from other governing bodies, along with representatives of private businesses and the news media. However, if a majority of a quorum of one or more governing bodies attends, the meeting is subject to the Act, with notice accordingly required as provided by K.S.A. 75-4318."

COMMENT: This opinion was not rendered to a watershed district. However, districts are subject to the Kansas Open Meetings Act.

h. Attorney General Opinion No. 85-161:

Frequency of meetings.

Meetings of directors Pursuant to K.S.A. 24-1212, a watershed district board is required to have regular meetings once each quarter during the year. While this statute establishes minimum standards, which must be met by the board, more frequent regular meetings may be held in that the statute is directory, rather than mandatory, on this point."

i. Attorney General Opinion No. 91-31:

Executive sessions – personnel issues.

"K.S.A. 75-4318 permits a city's grievance committee to deliberate on the disposition of an individual employee's grievance matter outside of an open meeting because such a grievance committee, while otherwise subject to the KOMA, is acting in a quasi-judicial manner within the scope of authority of that committee. Prior to such deliberations, K.S.A. 75-4319 permits the grievance committee to recess from an open meeting into a closed or executive session for the purpose of discussing personnel matters of non-elected personnel, and thus, employment related grievances of individual employees of the city may discretionarily be discussed in a properly recessed executive or closed session.

Individuals who aid the committee in such a discussion may be discretionarily permitted

into such a closed or executive session. However, binding decisions by the committee must be made in an open meeting."

COMMENT: This opinion was not rendered to a watershed district. However, districts are subject to the Kansas Open Meetings Act. Open meetings of directors; exception for attorney-client discussions. "Pursuant to K.S.A. 24-1212, a watershed district board may not go into executive session at any time. However, as a watershed district is also governed by the terms of the Open Meetings Act, K.S.A. 75-4312 et seq., a conflict arises between the two enactments, in that the later permits executive sessions for certain specified purposes. Among these purposes is consultation with an attorney which is privileged under the attorney-client relationship. As the two enactments cannot be reconciled, that portion of K.S.A. 24-1212 proscribing such executive sessions is repealed by implication."

j. Attorney General Opinion No. 91-73:

Meeting defined; Quorum; Impact of abstention on quorum; Disqualified member.

"It is our opinion that unless a specific law alters common law, the presence of five of a nine member board constitutes a quorum of that body a majority vote of those five members (three) is sufficient to bind the body. If one of the members abstains from the vote, he is deemed to have voted with the majority unless he has an interest or bias in the matter and is therefore disqualified. Where the required majority exists without the vote or presence of the disqualified member, his vote or presence will not invalidate the result. Members disqualified from voting may not be counted when determining whether a quorum is present. Cited herein: K.S.A.75-4317a."

6. Budgets

a. Attorney General Opinion No. 84-34:

Kansas budget law.

"As a general rule, a special district that certifies tax levy or budget to another political subdivision, but which does not directly levy a tax, is not subject to the Kansas Budget Law."

7. Realty Sales

a. Attorney General Opinion No. 81-20:

Sale of real estate.

"A watershed district organized pursuant to K.S.A. 24-1201 et seq. is a body corporate and politic, and has among its enumerated powers the ability to sell land and execute the necessary contracts therefore. Insofar as the sale of land on contract advances the purposes of the district and is otherwise properly made, such a sale is binding on the successors to the present board and does not violate either the Cash Basis Law (K.S.A. 10-1101 et seq.) or any other Kansas statutes."

8. No Fund Warrants

a. Attorney General Opinion No. 87-134:

Payment of no fund warrants.

"A watershed district issuing no-fund warrants under K.S.A. 24-1219, as amended, must make a tax levy at the first tax levying period after such warrants are issued sufficient to pay such warrants and interest. A watershed district may apply to the board of tax appeals for the authority to issue no-fund warrants under K.S.A. 79-2939 only if the district incurs unanticipated expenses which could not have been foreseen at the time the district's budget for the current budget year was being prepared."

9. Directors or Supervisors Serving as Employees

a. Attorney General Opinion 79-301:

Conflict of interest.

"A director of a watershed district established pursuant to K.S.A. 24-1201 et seq., may not at the same time be employed by the district as a paid assistant."

10. Securities for Deposits of Public Funds

a. Attorney General Opinion No. 87-98:

Use of mutual funds.

"Mutual funds may not be used as securities for the deposit of state and municipal funds."

b. Attorney General Opinion No. 88-20:

Annual Meeting - Report of Financial Condition and Activities.

"In preparing the annual report as prescribed by K.S.A. 24-1211, the board of directors of a watershed district must separately evaluate each of the districts projects in regard to the public interest and make a determination relative thereto. Additionally, in determining whether a project is in the public interest, the board is to consider the interest of all persons in the district."

11. Open Records

a. Attorney General Opinion No. 87-4:

Costs for open records.

"The Kansas Open Records Act provides that public agencies may charge reasonable fees for photocopying public records. Fees are reasonable if they do not exceed the actual cost, or costs directly incurred, in providing copies."

COMMENT: This opinion was not rendered to a watershed district; however, watershed districts are subject to the Kansas Open Records Act.

b. Attorney General Opinion No. 87-137:

Record requests that may be denied.

"A custodian of public records who reasonably believes that a requestor will use the information for prohibited purposes must deny access to the records. Disclosure of the information in such a case will subject the custodian to possible criminal charges. The Kansas Open Records Act does not require a public agency which maintains records on computer facilities to write a computer program to produce requested information in a certain form if the information is available in existing records."

c. Attorney General Opinion No. 91-50:

Personal information.

"If a public record qualifies as a personal record, it may be closed pursuant to K.S.A. 1990 Supp. 45-221 (a) (4), with the exception of the information noted therein. However, not every public record concerning public employees automatically qualifies as a personal record. Public records may be closed pursuant to K.S.A. 1990 Supp. 45-221 (a) (30) when public disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure under this subsection may not occur if the elements of the invasion of privacy are not present, if the invasion of privacy can be eliminated by deleting the identifying personal information pursuant to K.S.A. 1990 Supp. 45-221 (d), by providing statistical information pursuant to K.S.A. 1990 Supp. 45-221 (e), or if the individual whose privacy interest is at risk consents to the disclosure. Closure under K.S.A. 1990 Supp. 45-221 (a) (4) or (a) (30) is discretionary not mandatory."

12. Lease/Purchase Agreements; Applicability of Cash Basis Law

a. Attorney General Opinion No. 96-2:

Use of a lease-purchase agreement.

"A watershed district is defined as a municipality under K.S.A. 1995 10-1101(a) and may utilize the provisions of K.S.A. 10-1116b to enter into a lease -purchase agreement if such an agreement does not violate the restrictions still in place under K.S.A. 2-1908(l). A properly worded lease-purchase agreement containing the language and limitations set forth in K.S.A. 10-1116b and 10-1116c, does not create a debt obligation exceeding the current budget year."

COMMENT: K.S.A. 10-1116b permits governing bodies of municipalities subject to the cash basis law to enter into agreements which provide for periodic payments or monthly installments, but only if the following language is included. The impact of this language results in an agreement, which does not obligate the municipality to make payments beyond the current budget year. A lease-purchase agreement must specifically state: "that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may be lawfully made from (a) funds budgeted and appropriated for that purpose during such municipality's current budget year or (b) funds made available from any lawfully operated revenue producing source."

13. Annexation-Dissolution

a. Attorney General Opinion No. 63-14:

Powers of eminent domain.

Question: Is a watershed district the proper governmental unit to condemn property for the relocation of a township road which will be inundated by the project of the watershed district?

Answer: No

b. Attorney General Opinion No. 76-33:

Dissolution.

"A petition which calls for an election for dissolution of a watershed district organized pursuant to K.S.A. 24-1201 et seq., only conditionally if certain recited therein are not solved in a satisfied and acceptable manner, and which is not shown to be signed by the statutory proportion landowners of the district by a verified enumeration thereof by one of such landowners, is legally insufficient, for either of these reasons to require an election for dissolution pursuant to K.S.A. 24-1228."

"Section 24-1205 specifically prescribes the procedure for including incorporated cities or portions thereof in a watershed district. It provides for election to be called by the governing body of the City "for such purpose of approval or disapproval by the qualified voters of the area of said City sought to be included in said watershed district." It further provides that, if approved, the Mayor shall sign the petition as representative of the land within the City limits."

c. Attorney General Opinion No. 79-283:

Dissolution.

"A watershed district organized pursuant to the Watershed District Act, K.S.A. 24-1201 et seq., may not be dissolved using the procedures found in K.S.A. 24-1228 if a general plan for the district has been adopted. Furthermore, only the procedures prescribed by statute may be used to dissolve such a district."

- d. Attorney General Opinion No. 80-147:
Annexation of district territory.
Effect of annexation by City on territory within district. “The annexation by a city of territory lying within a watershed district established pursuant to K.S.A. 24-1201 et seq. does not have the effect of automatically detaching such territory from the district. That may be done only by the Chief Engineer of the Division of Water Resources upon receipt of a properly-framed petition (K.S.A. 24-1229). Additionally, even if this procedure is carried out, such territory remains liable for its share of any bonds issued by the district prior to the date of detachment.”

14. Other Attorney General Opinions of Interest

- a. Attorney General Opinion No. 80-161:
Trespass.
Applicability of criminal trespass to non-navigable body of water. “The term land as used in defining criminal trespass includes non-navigable bodies of water and is not limited to dry ground.”
- b. Attorney General Opinion No. 86-158:
Liability.
Assignment of liability for damages caused by works of improvement. “K.S.A. 24-1209 Fourth authorizes a watershed district to construct, improve, maintain and operate works of improvement. If a work of improvement, such as a water retarding structure, fails and damages property located downstream, liability will arise only where such structure was negligently constructed, operated or maintained. The party upon whom liability shall fall is the party who is in control and possession of the water retarding structure. Such liability may fall upon the watershed district.”
- c. Governmental Ethics Opinion No. 1994-29

FACTUAL STATEMENT

We understand you request this opinion in your capacity as Executive Director of the State Conservation Commission. You advise us that watershed districts are organized under the provisions of K.S.A. 24-1201 et seq. The purpose of the district is to construct, operate and maintain works of improvement needed to provide for water management. Water management includes problems resulting from erosion, floodwater or sediment damages, and instability of natural water supplies. There are 87 organized watershed districts in Kansas. A board of directors of three to fifteen members are responsible for administration of the watershed district. Organized watershed districts have taxing authority (within limitations) and the power of eminent domain, in addition to other powers granted by K.S.A. 24-1209. The districts can employ personnel to assist in the performance of their statutory powers and duties. However, due to the limitations of funds available, ranging from \$3,000 to \$50,000 per year, most districts do not employ full-time staff.

Since FY 1977, the Kansas Legislature has appropriated funds for assistance in the construction of flood detention dams. These funds are appropriated to the State Conservation Commission and subsequently allocated to watershed districts for flood detention projects. The Commission has developed administrative regulations for the implementation of the state assistance in watershed dam construction. One of the requirements for state assistance is a single contact person in the watershed. This person is called the “Contracting Officer” as per K.A.R. 11-3-2(b). The Contracting Officer’s

primary duties are to handle the administrative procedures necessary in the construction of flood detention dams. All watershed districts receiving state assistance have secured the services of a Contracting Officer. The following types of individuals are serving in this capacity:

QUESTION

May the individuals described below serve as Contracting Officers and, if so, are there any restrictions on their activities?

1. Current watershed district board members
2. Former watershed district board members
3. Members of engineering firms
4. Independent consultants
5. Retired USDA Soil Conservation Service personnel
6. Attorneys
7. Individuals not on board but with interest in flood control and conservation
8. Employees of the Watershed District

OPINION

The first issue raised by your request is whether the state level conflicts law (K.S.A. 46-215 et seq.) or the local level law (K.S.A. 75-4301 et seq.) applies to the position of a Contracting Officer for a Watershed District. This in turn depends upon whether the Watershed District is a “state agency” or a “governmental subdivision”.

K.S.A. 46-224(a) defines “state agency” as follows: ”’State agency’ means the legislature, legislators, legislative committees and councils and all executive departments, institutions, offices, officers, commissions, boards and authorities of the state, but does not include municipalities and other political subdivisions.”

K.S.A. 75-4301a(f) defines “governmental subdivision” as follows: ”’Governmental subdivision’ means any city, county, township, school district, drainage district or other governmental subdivision of the state having authority to receive or hold public moneys or funds.” It is our opinion that a Watershed District is an “other political subdivision” for the purpose of K.S.A. 46-224(a) and, therefore, not a “state agency”. It does meet the definition of “governmental subdivision” such that K.S.A. 75-4301 et seq. applies to it and its employees and officers. (See K.S.A. 75-4301a(c)&(d).) The prohibitions in K.S.A. 75-4301 et seq. are not as extensive as those in the state level act.

Response

Thus, in response to your specific question. None of the eight situations you describe are precluded by the act simply because of the status of the individuals. There is no prohibition from dual office holding, nor is there a prohibition from serving as a local official while the agency one serves does business with a local official’s private business interests. There is, however, a prohibition from participating as a local official in the making of contracts between the local agency and ones’ private business interests (K.S.A. 75-4304). Also, official actions other than contracts which affect ones’ own private

business interests must be disclosed (K.S.A. 75-4305).

Sincerely,

Richard C. Loux, Chairman
By Direction of the Commission

February 8, 2008

Greg A Foley, Executive Director
Kansas State Conservation Commission
109 SW 9th Street Suite 500
Topeka KS 66612

Re: Drainage and Levees- Watershed Districts-Complete or Partial Dissolution; Ability to Dissolve When District is a Party to Contract; Responsibility for Flood Control Structures upon Dissolution of District.

Dear Mr. Foley:

As Executive Director of the Kansas State Conservation Commission, you first ask whether a watershed district may dissolve if the district has developed and adopted a general plan and has built flood control structures. If so allowed, you ask who would then be responsible for performing the contract regarding future operation and maintenance of the structure.

Within the Watershed Districts Act (1) a set of statutes provides for the complete or partial dissolution of a watershed district (2). These statutes establish the process for dissolution and disposition of any remaining funds of the districts. Dissolution of a watershed district, however, is dependent on whether the district has developed and adopted a general plan and has built flood control structures.

Dissolution is authorized in two circumstances:

- (1) if a watershed district has been organized and incorporated for more than eight years and has not adopted a general plan of work and projects to be undertaken by the district, constructed or contracted to construct any works of improvement or incurred any continuing obligations for maintenance of any works of improvement.
- (2) when a watershed district has been organized and incorporated for more than four years and has not made substantial progress toward a general plan of work and projects to be undertaken by the district.(3).

Thus, in answer to your first question, a watershed district may not dissolve if the district has developed and adopted a general plan and has built flood control structures. Since your follow-up questions are premised on an affirmative answer to the first question, we are not addressing those questions.

Sincerely,
OFFICE OF THE ATTORNEY GENERAL
STEPHEN N. SIX

Camille Nohe
Assistant Attorney General[TK[4]

Kansas Open Records Act (KORA)

THE FOLLOWING SECTION IS FOR QUICK REFERENCE ONLY. THE ENTIRE KANSAS OPEN RECORDS ACT, AVAILABLE AT K.S.A. 45-214 ET SEQ., SHOULD BE CONSULTED BEFORE MAKING ANY FINAL DETERMINATION.

1. Purpose of KORA

- It is the public policy of Kansas that "public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy." K.S.A. 45-216(a). See also *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, Syl. ¶ 3 (2000).
- "The burden of proving an exemption from disclosure is on the agency not disclosing the information." *State Dept. of SRS v. Public Employee Relations Board*, 249 Kan. 163, 170 (1991).

2. Records Subject to KORA

- The Act applies to public records (not to private records): Public records are defined as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency; or any officer or employee of a public agency pursuant to the officer's or employee's official duties and which is related to the functions, activities, programs or operations of any public agency." K.S.A. 45-217(f). *Harris Ent. v. Moore*, 241 Kan. 59, 60, 62, 63 (1987); public agency is defined at K.S.A. 45-217(e). A.G. Opin. No. 90-14 (record in possession of public agency).
- The KORA covers more than just paper copies or written information.
- Any recorded information regardless of form or characteristics" means that "public records are not restricted to written records." *Burroughs v. Thomas*, 23 Kan.App.2d 769, Syl. ¶ 1 (1997). This case held that autopsy photos are public records.
- Computer data is a "record." *State ex rel. Stephan v. Harder*, 230 Kan. 573 (1982) (considering prior records statute). A.G. Opins. No. 87-137, 88-152, 89-106, and 94-104.
- Disclosure of KORA information on the internet is allowed under Kansas statutes. *State v. Stevens*, 26 Kan.App.2d 606 (1999).
- Records not yet in existence are not subject to KORA; a prospective or standing request for "records as they become available" is not enforceable. A.G. Opin. No. 98-51.
- The KORA does not require that a record be created in order to respond to requests or in order to answer questions asking for "information." But see K.S.A. 45-221(d), which requires separation of open from closed information contained in public records; this may have the practical impact of requiring creation of a new document.

3. Public Agencies Subject to KORA

- Public Agency: the state or any political or taxing subdivision, or any office, officer, or agency thereof, or any other entity, receiving or expending and supported in whole or part by public funds. K.S.A. 45-217(e).

- No entity is included under KORA solely because it receives public funds in exchange for goods or services. K.S.A. 45-217(e) (2) (A). Receipt of public funds alone will not subject a vendor to the KORA. See A.G. Opin. No. 2004-34. But see K.S.A. 45-240.
- Although most private entities are not subject to the KORA, some nonprofit corporations might be included.
- Records made, maintained or kept by a legislator or member of a governing body are not public records. K.S.A. 45-217(f)(2).
- Records owned by private persons which are not related to a governmental function are not included. K.S.A. 45-217(f)(2).
- Does not include "any officer or employee" if not provided with "an office which is open to the public at least 35 hours per week." K.S.A. 45-217(e)(2)(C).
- "This exclusion applies only to the part time officials personally and not the governmental entity they serve." Frederickson, Letting the Sunshine In, 33 Kan. L. Rev. 205, 219-20 (Winter, 1985).
- Offices which do not have regular office hours are required to establish reasonable hours when persons may inspect and copy documents, but such offices may require 24 hours advance notice. K.S.A. 45-220(d). For this provision to have any meaning, the 35 hour per week exclusion of K.S.A. 45-217(e)(2)(C) must not apply to the office, but rather only to individuals, officers or employees, working in such offices.
- Right of public to inspect and make or obtain copies of records. K.S.A. 45-219.
- Unless closed pursuant to specific legal authority, all records are open for inspection. K.S.A. 45-218(a).
- Any person may make abstracts or obtain copies of a public record. K.S.A. 45-219.
- If copies cannot be made in the place where the records are kept the custodian shall allow arrangements to be made for use of other copying facilities. K.S.A. 45-219(b).
- Members of the public cannot remove a record without written permission of the custodian. K.S.A. 45-218(a).
- A public agency is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations, unless the items were shown or played at a public meeting, but not if copyrighted by someone other than the public agency. K.S.A. 45-219(a). However, under K.S.A. 45-220, access to the record must be provided unless there is a exception from disclosure based upon the content or nature of the item.
- Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. The agency is not required to acquire or design a special program to produce information in a desired form but has discretion to allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form. A.G. Opins. No. 88-152 (voter registration lists); 89-106; 87-137.

4. Agency may prescribe reasonable fees:

- Fees for copies shall not exceed the actual cost, including the cost of staff time.
- 20 cents per page charged by a school district was not unreasonable as it reflected actual costs. A.G. Opin. No. 87-4. Other jurisdictions have generally not upheld copying costs in excess of \$.25 per page.
- b. K.S.A. 45-219(c)(5) applies to fees for access to or copies of public records of a public agency within the executive branch of the state government. Any person requesting

records may appeal the reasonableness of the fees charged for providing access to or furnishing copies of such state agency records to the secretary of administration whose decision shall be final. A fee for copies of public records possessed by such a state agency which is equal to or less than \$.25 per page shall be deemed a reasonable fee.

- Fees, i.e. staff time, for retrieval of information are contemplated by KORA since the statute provides for fees for "staff time required to make the information available." K.S.A. 45-219(c)(1). See, *Frederickson, Letting the Sunshine In*, 33 Kan. L.Rev. 225-27 (Winter 1985).
- If records are maintained on computers, fees may include the cost of any computer services, including staff time. A.G. Opin No. 93-126. Proration of costs of computerizing is probably precluded, as such costs are normally required even without record requests.
- When public records are repackaged in a computerized form in order to facilitate public access to the records, additional fees for computerization may be charged, so long as the basic records are available elsewhere at cost. A.G. Opin No. 95-64.
- Fees for providing access of copies of public records are to recoup the actual costs associated with providing access or copies. Such fees are not meant to pay for costs that would be incurred by a public agency even without a record request. E.g. Overhead, capital improvements, utility bills, rent/building payments, etc.
- Fees may include the cost of staff time spent in redacting open from closed information. *Data Tree, L.L.C. v. Meek*, 109 P.3d 1226, ___ Kan.App.2d ___ (2005).

5. Procedures for obtaining access or copies of records. K.S.A. 45-220.

- Each public agency is to appoint a freedom of information officer to assist the public with KORA requests and disputes. K.S.A. 45-226. That officer is to provide information on KORA including a brochure stating the public's basic rights under KORA. K.S.A. 45-227.
- Each public agency is to adopt procedures to be followed. Use the same procedure for all requests. K.S.A. 45-220(a).
- Each agency must provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records. K.S.A. 45-220(e).
- Members of the public can inspect during regular office hours and any established additional hours. K.S.A. 45-218(b).
- If the agency does not have regular office hours, it shall establish reasonable hours when persons may inspect records. An agency without regular office hours may require 24 hour notice of desire to inspect. Notice shall not be required to be in writing. K.S.A. 45-220(d).
- The public agency may require proof of identity. K.S.A. 45-220(b).
- The public agency may require the request to be written, but not on a specific form. K.S.A. 45-220(b).
- The public agency may require written certification that the requester will not use names and addresses obtained from the records to solicit sales to those persons whose names are contained in the list. K.S.A. 45-220(c) (2). See also K.S.A. 45-230. Other than to ask for the name/identity of the requestor, and this certification, the public agency should not require other information from requesters before complying with the KORA request.
- K.S.A. 45-217 and 45-220 permit the official custodian to designate other persons to carry out custodial duties. A.G. Opin. No. 90-89.

- The public agency must respond to the request as soon as possible, but not later than the end of the third business day following the date the request was received. K.S.A. 45-218(d).
- If access is not granted immediately, the public agency must give a detailed explanation for the delay. K.S.A. 45-218(d).
- If the request is denied, a written statement of the legal grounds for the denial shall be given upon request. K.S.A. 45-218(d). Some degree of specificity is required. "The burden of establishing the applicability of an exemption from disclosure under the Kansas Open Records Act requires the party claiming the exemption to provide more than conclusory language, generalized allegations, or mere arguments of counsel. A sufficiently detailed record must be provided to show the reasons why an exemption applies to the materials requested." *Southwest Anesthesia Associates v. Southwest Medical Center*, 23 Kan.App.2d 950, Syl. ¶ 2 (1997).
- Access may be denied if the request places an unreasonable burden in producing the record or is intended to disrupt the agency. K.S.A. 45-218(e). CAUTION - this provision should be used only in extreme circumstances. Refusal under this section must be sustained by a preponderance of evidence.
- The public agency may require payment of allowed fees in advance. K.S.A. 45-218(f).

6. Prohibited uses of certain records

- A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed. K.S.A. 45-220(c)(2), K.S.A. 45-230.
- This provision does not prohibit commercial use generally, it just applies to use of the names to sell or offer to sell property or a service to those persons/entities on the list. A.G. Opin. No. 98-51. A group of local ministers may use lists from public records to provide information about area churches. A.G. Opin. No. 2000-35.
- This provision does not prohibit use of lists of names obtained from public records to solicit the purchase of property from the persons listed. A.G. Opins. No. 96-68 (water meters); 98-55 (promissory note underlying contract for deed).
- This provision pertains to the names and addresses of businesses listed in the public records, as well as individuals. A.G. Opin. No. 87-73.
- Any person (including the records custodian) who violates this law and gives or receives records for such purpose can be penalized with the same civil fines and penalties in K.S.A. 45-223.
- The agency may require a person who requests such records to provide written certification that she or he will not use the record for that prohibited commercial purpose. A.G. Opin. No. 87-137; K.S.A. 45-220(c).
- If requestor makes this certification the custodian is relieved of liability if custodian provides records in good faith reliance on certification. A.G. Opin. No. 94-132.
- Cannot circumvent this provision indirectly; a third party who obtains this information from a "requestor" violates the law if it is used for commercial purposes.
- A newsletter service which provides lists of names and addresses obtained from public records for its subscribers to solicit, is the type of activity prohibited under the KORA. A.G. Opin. No. 86-1.
- Use of information obtained from public records to publish land ownership maps (A.G. Opin. No. 86-39) and "ownership product" documents (A.G. Opin. No. 89-47) does not violate the law.

7. Records that are mandatory closed

- Some public records are mandatory closed by federal law, state statute, or Supreme Court Rule. These types of public records must be closed. The record custodian has no discretion or choice about whether to provide copies or access.

Examples include but are not limited to:

- Child in need of care records and reports, including certain juvenile intake and assessment reports. K.S.A. 38-1507.
- Juvenile court records if under 14 and ordered closed by judge, K.S.A. 38-1607; juvenile law enforcement records, municipal court records if under 14, 38-1608(a); victims of sex offense by juvenile, 38-1608(c); "[a]ll records, reports and information obtained as a part of the juvenile intake and assessment process for juvenile offenders shall be confidential and shall not be disclosed except as provided in this section or by rules and regulations established by the commissioner of juvenile justice." K.S.A. 38-1608(e).
- Individually identifiable drug abuse treatment records. K.S.A. 65-4608; K.S.A. 45-221(a)(3).
- Financial information of an identifiable taxpayer filed with the county appraiser, or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. K.S.A. 45-221(b).
- Criminal history record information in possession of law enforcement agency. K.S.A. 22-4701 et seq.; K.S.A. 22-4707; K.A.R. 10-12-2. (Conviction information is in some circumstances open, nonconviction information is closed.) See A.G. Opin. No. 98-38. 6. Ballots. K.S.A. 25-2422. However, election petitions are open. A.G. Opin. No. 97-22.
- Unexecuted search or arrest warrants. K.S.A. 21-3827. Affidavits and sworn testimony given to obtain such a warrant is closed except as to the defendant or as otherwise ordered by the court, K.S.A. 22-2502(c); A.G. Opin. No. 87-100. (It is a crime to disclose an unexecuted warrant, but this does not apply to personnel of a law enforcement agency disclosing a search warrant:
 - For the purpose of encouraging the person named in the warrant to voluntarily surrender; or issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant).
- Presentence reports. K.S.A. 21-4605(b).
- Grand jury proceeding records. K.S.A. 22-3012. (Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the prosecuting attorney for use in the performance of his duties).
- Adult Authority presentence report, the preparole report, the pre-postrelease supervision report and the supervision history. K.S.A. 22-3711.
- Mentally ill persons' commitment and treatment records. K.S.A. 59-212; K.S.A. 59-2931; K.S.A. 59-2941; 59-2979.
- All information, records and reports received or developed by an ombudsman or volunteer concerning long-term care facility residents' information. K.S.A. 75-4310.
- Peer review records. K.S.A. 65-4915(b).
- Adoption records. K.S.A. 59-212; K.S.A. 59-214; K.S.A. 59-2122; K.S.A. 65-2423; K.S.A. 59-2979; and K.S.A. 65-5601 to 65-5605.
- Income tax reports and returns. K.S.A. 79-3234(b).

- Racing Commission KBI background checks. K.S.A. 74-8804(o).
- Kansas Department of Health and Environment vital statistics - marriage, birth and death certificates. K.S.A. 65-2422 (restrictions are only on information in hands of vital statistics).
- Kansas Civil Rights Commission may not disclose investigation information without consent. K.S.A. 44-1005.
- Crime Victim Compensation Board, all records and information given to the Board is confidential. K.S.A. 74-7308(e).
- Social security numbers under some circumstances. See 5 U.S.C. § 552a note.
- Certain student information or educational records. 20 U.S.C. § 1232g.
- Convictions for violating a maximum posted speed limit of 55 miles per hour or more but not exceeding 70 miles per hour, by not more than 10 miles per hour in excess of such maximum speed limit. K.S.A. 8-1560d.
- Reports of contagious disease. K.S.A. 65-118.
- There are many federal, state or court laws/rules that may protect or close certain information in public records. The record custodians possessing such records should be familiar with the laws that apply to the records in their possession. If the record custodian denies a request for access or copies, K.S.A. 45-218(d) requires the custodian to provide a written citation to the law(s) being relied upon, if that information is requested.

8. Records that may be discretionarily closed—K.S.A. 45-221

- K.S.A. 45-221(a) lists types of public records that are not required to be disclosed. The public agency has discretion and may decide whether to make these types of records available. A.G. Opin. No. 89-107. However, the burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. *Southwest Anesthesia Serv. v. Southwest Med. Ctr*, 23 Kan.App.2d 950 (1997).
- Some of the records which may be discretionarily closed include:
- Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies. K.S.A. 45-221(a)(4). A.G. Opin. No. 91-127. The personnel exception is designed to protect information that is normally kept in personnel records files, such as documentation of discipline, references and resumes, ADA and FMLA issues, as well as specific personal information such as home address and social security number. K.S.A. 45-221(a) lists three categories of records which may be exempt from the disclosure requirement: "personnel records, performance ratings or individually identifiable records," all of which must pertain to the public agency's employees or applicants for employment. A.G. Opin. No. 99-55. However, the "names, positions, salaries and lengths of service" of public officers and employees must be made public. K.S.A. 45-221(a)(4); A.G. Opins. No. 88-61; 91-50 (salary deduction not open); 92-132 (pension plan part of salaries); 2000-8 (names of members appointed to states boards must be disclosed).
- K.S.A. 45-221(a)(4) opens actual compensation employment contracts or employment-related contracts or agreements.
- Home addresses of public employees may be closed. A.G. Opin. No. 97-52. See also *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994) (disclosure of home addresses can be a clearly unwarranted invasion of personal privacy.)
- The exemptions in K.S.A. 45-221(a)(4) and (15) do not apply to nonemployees or to independent contractors. Independent contractors are not "personnel," so records

concerning them may not be closed under this exception. *Southwest Anesthesia Serv. v. Southwest Med. Ctr.*, 23 Kan.App.2d 950 (1997).

- Most terms in employment contracts are open, except to the extent that a term contains personal or other information specifically closed by other laws. A.G. Opin. No. 99-55.
- Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual, K.S.A. 45-221(a)(6), unless the recommendation is for someone to fill an elected or appointed office.
- Criminal investigation records. Defined at K.S.A. 45-217(c). While criminal investigation records may be discretionarily closed, this is the one category of records for which criteria for judicial review of the decision is established in the statute. The factors to be considered in opening the records basically weigh public interest in disclosure vs. harm of disclosure. K.S.A. 45-221(a)(10)(A)-(F). K.S.A. 45-221(a)(10) requires custodians of criminal investigation records to, upon request, identify which factor(s) in are applicable to the record(s) being closed under this exception.
- "Public interest' . . . means an interest in a matter affecting a right or expectancy of the community at large. Mere curiosity about the circumstances surrounding an investigation is not sufficient." *Harris Enterprises, Inc. v. Moore*, 241 Kan. 599 (1987). The legislative intent behind the criminal investigation records exception to the Kansas Open Records Act is to protect innocent persons whose names might be involved in an investigation, either as possible suspects or as informants. *Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (2000).
- Court records and docket sheets may not be closed as criminal investigation records. K.S.A. 45-217(b); A.G. Opin. No. 87-145.
- Police blotter, roster of jail inmates and the front page of a standard offense report are required to be open to the public; mug shots and standard arrest report are not required to be open to the public. A.G. Opin. No. 87-25, 98-38. If a police department does not maintain a blotter, they are under a common law duty to disclose basic information about arrests reasonably contemporaneously with the arrest. A.G. Opin. No. 98-38.
- A log of breath test machine results is a criminal investigation record. A.G. Opin. No. 87-63.
- Coroner reports are subject to disclosure unless they have been filed with the clerk of the district court and designated as a criminal investigation record. A.G. Opin. No. 86-5 and K.S.A. 22a-232. Autopsies as part of coroner's reports are open unless the coroner's report is filed as a criminal investigation record. *Burroughs v. Thomas*, 23 Kan.App.2d 769 (1997).
- Other records of investigations of a death may be closed even if the death turns out to be from natural causes so long as there was initially a criminal investigation. *Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (2000).
- Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law. K.S.A. 45-221(a)(5).
- Notes, preliminary drafts, research data in the process of analysis, memoranda or other records in which opinions are expressed or policies or actions are proposed. This exception does not apply when such records are cited or identified in a public meeting. K.S.A. 45-221(a)(20). A.G. Opin. No. 90-14. See also, K.S.A. 45-221(a)(21) and (22); records of public agency having legislative powers. A.G. Opin. No. 90-92.
- These three provisions "are intended to protect an agency's internal predecisional deliberations from early disclosure." *Frederickson, Letting the Sunshine In*, 33 Kan. L.Rev. 205, 249 (Winter 1985).

- Although reports prepared by a consultant for an agency are probably protected by this exception, other documents disclosed outside of government probably cannot be withheld based upon this exception. See *Dept. of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001).
- Library patron and circulation records which pertain to identifiable individuals. K.S.A. 45-221(a)(23). Library archive and museum materials contributed by private parties may be closed if closure was a condition of donation. K.S.A. 45-221(a)(7).
- Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy. K.S.A. 45-221(a)(30). A.G. Opins. No. 92-149 (victim of sex offense); 99-55, 98-38, 87-25 (social security number).
- This is a very limited exception, and often turns upon the circumstances of each individual situation.
- K.S.A. 45-217(b) defines "clearly unwarranted invasion of personal privacy" to mean "revealing information that would be highly offensive to a reasonable person including information that may pose a risk to a person or property and is not a legitimate concern to the public."
- Cases from other states are not consistent, but generally employ a balancing test of public interest vs. private harm, allowing closure only when there is a demonstrable harm.
- Social Security numbers, mothers' maiden names and dates of birth contained in public records held by a county register of deeds can be closed to a business information provider. *Data Tree, L.L.C. v. Meeks*, 109 P.3d 1226, ___ Kan.App.2d ___ (2005).
- L. 2006, Ch. 213 allows victims of domestic violence, sexual assault, trafficking or stalking to obtain a "fake" address from the Secretary of State's office for use when responding to record requests.
- Records concerning prospective location of a business or industry where no previous disclosure has been made. K.S.A. 45-221(a)(31).
- Exceptions related to bids:
 - Specifications for competitive bidding until the specifications are approved. K.S.A. 45-221(a)(27).
 - Sealed bids until a bid is accepted or all rejected. K.S.A. 45-221(a)(28).
 - Engineering and architectural estimates for public improvements. K.S.A. 45-221(a)(33). (To prevent bidders from learning agency's estimates of cost of a project.)
 - Financial information submitted by contractor in qualification statements. K.S.A. 45-221(a)(34). See also K.S.A. 45-221(c)(2) and K.S.A. 60-432, trade secrets.
- Records concerning emergency or security information or procedures. K.S.A. 45-221(a)(12) and (45); also not subject to subpoena or discovery.
- Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure. K.S.A. 45-221(a)(2). (Includes attorney client privilege. Possibly includes trade secrets, K.S.A. 60-432.)
- Attorney billing records are not closed, per se, as either attorney client privilege or work product privilege, and therefore generally must be disclosed if in the possession of a public agency. All narrative statements in attorney billing statements are not per se privileged. Rather, parties claiming the privilege will have to show its application to particular narrative statements in billing records. Parties objecting to discovery on the basis of the attorney-client privilege bear the burden of establishing that the privilege applies. To carry the burden, they must describe the documents or information to be protected, state precise reasons for the objection to discovery, and provide sufficient information to enable the court to determine whether each element of the asserted

privilege is satisfied. A blanket claim as to the applicability of a privilege does not satisfy the burden of proof. Some detail may be closed, but the burden is on the public agency to justify it. *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407 (2000).

- An investigation by an attorney for a client for the purpose of providing legal advice may be closed as attorney client privileged. A.G. Opin. No. 99-48.
- Attorney work product. K.S.A. 45-221(a)(25).
- Medical, psychiatric, psychological, alcohol or drug treatment records which pertain to identifiable individuals. K.S.A. 45-221(a)(3).
- Investigatory records of agencies involved in civil or administrative adjudication, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent. K.S.A. 45-221(a)(11).
- An agency's civil investigatory file becomes open at the completion of the case. A.G. Opin. No. 97-76.
- Records pertaining to an internal investigation of an agency's employee, disclosure of which would not interfere with a prospective administrative adjudication or civil litigation nor disclose the identity of a confidential informant, may nevertheless still be discretionarily closed if they fit the definition of a personnel record. A.G. Opin. No. 91-127.
- Correspondence between a public agency and a private individual, other than correspondence intended to give notice of an agency action, policy or determination. K.S.A. 45-221(a)(14). A complaint to a professional licensing board may be closed, the letter in response to the complaint is open. A.G. Opin. No. 97-76.
- Peer review/risk management records concerning certain health care professionals and facilities. K.S.A. 45-221(a)(35).
- Software, except that certain information about software must be disclosed. K.S.A. 45-221(a)(16).
- Unless otherwise required by law, a taxpayer's financial information required or requested by a county appraiser to determine property value for ad valorem taxation shall not be disclosed. K.S.A. 45-221(b). A.G. Opin. No. 89-118.
- Statistical information not descriptive of any identifiable person is subject to disclosure. K.S.A. 45-221(e).

9. Other limits on closure

- Contractual provision attempting to close certain terms is void as against public policy, provided no other closure exemptions apply. A.G. Opin. No. 91-116; 93-55.
- A settlement agreement cannot be closed by the parties, except to the extent that the KORA would allow closure, i.e., some parts may constitute a personnel record, some might be clearly unwarranted invasion of privacy.
- There have been several district court cases involving agreements to close settlement agreements involving public agencies. Not only have the courts held the agreements to be open, they awarded attorney's fees to the plaintiff in at least one case.
- If a public record contains material not subject to disclosure, that portion of the record must be deleted, and the record made available. K.S.A. 45-220(d). See also, *Tew v. Topeka Police & Fire Civ. Serv. Comm'n*, 237 Kan. 96 (1985); *State ex rel. Stephan v. Harder*, 230 Kan. 573 (1982); K.S.A. 45-221(d).

- If a record is reviewed and discussed during an open meeting, a record that may ordinarily be discretionarily closed, generally becomes open. A.G. Opin. No. 92-132.

10. Enforcement of the KORA

- Investigations
- Investigative subpoenas may be issued by the Attorney General and District/County Attorneys. K.S.A. 45-228.
- Attorney General and County/District Attorneys will accept complaints from public. A.G. normally refers complaints against local government to the County/District Attorney.
- Ordinarily, the Attorney General's office requests that complaints be timely made and be put in writing. This is done in order to verify facts, keep a record of the statements made, and in general assist with any investigation that becomes necessary.
- Litigation
- Any person, the Attorney General, or a County/District attorney, may file suit in district court.
- Suit must be brought in the county where the records are located. If the records are located out of state, there is no cause of action under KORA. *Altevogt v. Youth Friends*, 29 Kan.App.2d 473 (2001). See also *Wichita Eagle v. Simms*, 50 P.3d 66, 274 Kan. 194 (2002).
- District court may order injunction or mandamus.
- The court "shall" award attorney fees against defendant if it finds denial of access was not in good faith or against plaintiff if the action was not in good faith. K.S.A. 45-222. Reasonable attorney fees may be assessed, even upon appeal, as part of costs. See *Telegram Pub. Co. Inc., v. KDOT*, 275 Kan. 779 (2003).
- Fines of up to \$500 for "each violation" against public agency if the agency "knowingly violates any of the provisions of this act or that [it] intentionally fails to furnish information as required by this act. . . ." Such cases seeking a fine may only be brought by the Attorney General, District or County Attorney. K.S.A. 45-223.
- Such actions to be given precedence by the court.

11. Kansas public records preservation act. K.S.A. 45-401 et seq.

The KORA does not speak to preservation of public records. "Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record." K.S.A. 45-216(b). However, other laws may require that a public record be kept for a period of time.

- State agencies and counties are subject to the Preservation Act and are prohibited from destroying public records except as permitted by minimum records retention schedule as set forth by State Records Board. K.S.A. 45-403; 45-404(b).
- State Records Board, while technically attached to the Kansas Department of Administration, in practice functions through State Historical Society, Div. of Archives. K.S.A. 75-3501 et seq.
- Records Board has published a Local Government Records Manual which sets forth the schedule of minimum retention periods for counties. Information, including a copy of the schedule, may be accessed at:

<http://www.kshs.org/government/records/localgovt/index.htm>.

The Records Board is currently revising the Local Government Records Manual and is seeking input from counties. They may be contacted at 913-272-8681, ext. 270. County

commissions may petition Records Board for departures from local government general schedule. K.S.A. 45-405(c).

- Records Board has published State Records Retention Manual, which contains general schedule for state agencies. Information, including a copy of the schedule, may be accessed at <http://www.kshs.org/government/records/stategovt/index.htm>. State agencies are required to appoint a records officer to act as liaison to Records Board. K.A.R. 53-4- State agencies' records officers prepare and submit to the Records Board proposed specific retention schedules, which are approved by the Board.
- Electronic Records are also subject to retention. See www.kshs.org/government/records/electronic/index.htm
- Altering, destroying, defacing, removing or concealing any public record without legal authority is a class A misdemeanor. K.S.A. 21-3821.
- Counties, with approval of state archivist, may transfer noncurrent records to a county historical society, library, college, etc. K.S.A. 45-405(d). Any transferred records must not be of a confidential or restricted nature.
- Cities are not subject to the records retention board's schedule. However, the state archivist can advise on retention issues and there are statutory requirements for retention of certain city records. See K.S.A. 12-120.

Kansas Open Meetings Act (KOMA)

THE FOLLOWING SECTION IS FOR QUICK REFERENCE ONLY. THE ENTIRE KANSAS OPEN MEETINGS ACT, AVAILABLE AT K.S.A. 75-4317 ET SEQ., SHOULD BE CONSULTED BEFORE MAKING ANY FINAL DETERMINATION.

1. Purpose and construction

- It is the public policy of Kansas that meetings be open to the public because "a representative government is dependent upon an informed electorate. . . ." K.S.A. 75-4317
- The act is interpreted liberally and exceptions narrowly construed to carry out the purpose of the law. *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan. 663, 669 (1986)

2. Bodies subject to the KOMA

- Is the group subject to the KOMA?--two concurrent requirements: K.S.A. 75-4318
- All legislative and administrative bodies, state agencies, and political and taxing subdivisions.
- Which receive or expend and are supported in whole or in part by public funds.
- Specific Bodies Subject to the KOMA:
- Political and Taxing Subdivisions include cities, counties, townships (AG Opin. No. 81-288); school districts, community colleges (AG Opin. No. 81-258); watershed districts (AG Opin. No. 85-161); rural water districts (AG Opin. No. 88-97 and 89-91); drainage districts (AG Opin. No. 90-69); local historic preservation committees administering K.S.A. 75-2724 (AG Opin. No. 99-22).
- State Agencies and Boards, unless otherwise provided by statute.
- Subordinate Groups Subject to the KOMA--All subordinate groups, such as boards, commissions, authorities, councils, committees, subcommittees are covered by act if:

- The subordinate group meets funding test if the parent or controlling body meets funding test, *State ex rel., Murray v. Palmgren*, 231 Kan. 524 (1982), and
- Appointed by parent body to weigh options, discuss alternatives, present recommendations or a plan of action.
- It is the nature of the group, not its designation, which determines if it is subject to the KOMA. AG Opin. No. 86-92. See also AG Opins. No. 80-21; 77-53; 76-140; 76-122; 73-235; 86-38.

Examples--School District Advisory Board (AG Opin. No. 84-81); Fire District Advisory Board (AG Opin. No. 86-84); Mayor's commission subject to KOMA as it is subordinate to the city's governing body (AG Opin. No. 88-25); appointed grievance committees, created by a city to hear employee grievances (AG Opin. No. 91-31); DUR Board under SRS (AG Opin. No. 93-41); Parental boards under Rec. Commission (AG Opin. No. 93-73); House and senate conference committees (AG Opin. No. 93-113).

- Joint boards subject to the KOMA if boards composed of members of different governmental bodies and:
 - Appointed by official action (AG Opin. No. 86-48); or
 - A majority of a quorum of one or more governing bodies is present AG Opin. No. 84-103. See also AG Opin. No. 91-150.
- Non-profit corporations may be subject to the KOMA if the non-profit:
 - Receives or expends public funds;
 - Is subject to control of governmental unit(s); and
 - Acts as a governmental agency in providing services or has independent authority to make governmental decisions
- Nonprofit Corps Subject to KOMA: Area agencies on aging (AG Opin. No. 79-219); Economic Opportunity Foundation, Inc. (AG Opin. No. 84-10); McPherson Co. Diversified Services, Inc. (AG Opin. No. 79-284); Three Rivers, Inc. (AG Opin. No. 87-143); Cowley County Diversified Services (AG Opin. No. 87-188); HELP, Inc. (AG Opin. No. 88-27)
- Not subject to KOMA: Private nursing homes (AG Opin. No. 79-221); KU and WSU Endowment Associations (AG Opins. No. 80-239, 82-172); Planned Parenthood (AG Opin. No. 81-253); Hutchinson Cosmospere (AG Opin. No. 82-256); Electric Cooperative (AG Opin. No. 85-175); Memorial Hospital v. Knutson, 239 Kan. 663 (1986); Parsons Chamber of Commerce (AG Opin. No. 89-149); K-10 Corridor Development, Inc. (AG Opin. No. 94-42); Koch Commission (AG Opin. No. 94-55); Kansas Venture Capital, Inc. (AG Opin. No. 94-107); Mid-America Commercialization, Inc. (AG Opin. No. 94-99); Consensus Estimating Group -- with staff from state agencies (AG Opin. No. 94-93); Prairie Village Economic Development Commission (AG Opin. No. 99-64), Hesston Area Senior Center (AG Opin. No. 01-02); Sheltered Living, Inc. (AG Opin. No. 2004-34)
- Bodies and meetings not subject to KOMA:
 - Staff meetings
 - Judicial agencies and bodies (AG Opin. No. 82-254)
 - Bodies exercising quasi-judicial functions -- K.S.A. 75-4318(f)(1).
 - Quasi-judicial is defined as "a term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature." Black's Law Dictionary 1121 (5th ed. 1979).

- Example: Zoning boards (AG Opin. No. 78-13), city grievance panels (AG Opin. No. 91-31); hearing panels.
- Only quasi-judicial deliberations may be closed--binding action must be in open meeting. AG Opins. No. 91-31; 84-50; 79-225.
- Private Organizations. Example: Private/parochial schools (AG Opin. No. 81-94); Nursing homes (AG Opin. No. 79-221).
- Hospital board discussions regarding risk management and peer review laws exempted from open meeting discussion. AG Opin. No. 89-42.
- Meetings of legislature if house or senate rules so provide. K.S.A. 75-4318(a).
- Precinct committees. AG Opin. No. 94-157

3. Meeting--If a body is subject to the KOMA, the KOMA applies only when the body has a meeting as defined by the statutes.

- Meeting is a gathering, assembly, telephone call or any other means of interactive communication; by a majority of a quorum of the membership of an agency or body; for the purpose of discussing the business or affairs of the body. K.S.A. 75-4317a
- Gathering, Assembly, Telephone Call or other means of Interactive Communication
- Prearrangement was required prior to 1994, and the statute did not mention telephone calls. In *State v. Seward Co.*, 254 Kan. 446 (1994), the Kansas Supreme Court held that phone calls between a majority of a quorum of county commissioners discussing business was not subject to the KOMA because the calls were not pre-arranged, and the members were not in each other's physical presence. The legislature reacted to this case by deleting the requirement of prearrangement and adding to the definition "telephone call or any other means of interactive communication."
- A public body subject to the KOMA may legally conduct meetings by telephone, if it does so in compliance with all of the requirements of the KOMA. Regardless whether a meeting is to be conducted telephonically, in person, by video-conference, or even through third parties, the requirements of the KOMA remain applicable; AG Opin. No. 2005-03.
- Informal discussions before, after, or during recesses of a public meeting are held to be subject to the act. *Coggins v. Public Employee Relations Board*, 2 Kan. App. 2d 416, 423, rev. denied 225 Kan. 843 (1978)
- Title of the gathering--e.g. work sessions-- is irrelevant if the three requirements of a meeting are met. AG Opins. No. 80-197; 90-47
- Serial communications between a majority of a quorum of a public body, the purpose of which is to discuss a common topic of business or affairs of that body by the members, constitutes a meeting. Such communications may occur through calling trees, e-mail or an agent of the body. See AG Opins. No. 98-26, 98-49. See also AG Opin. No. 95-13

4. Majority of a Quorum

- "Quorum" means a simple majority of the membership of a body; the number greater than one-half of the total (unless otherwise provided by statute). AG Opins. No. 83-6; 91-73; 93-140; 96-32
- "A majority" is the number greater than one-half of a quorum; it is the smallest number that can take action on behalf of a body. AG Opin. Nos. 86-110; 93-140. See also AG Opins. No. 81-26 and 91-73.

- Examples: A quorum of a seven member body is four, and a majority of that quorum is three. A quorum of a five member body is three, and a majority of that quorum is two. (Conventional wisdom is that a majority of a quorum can never be one.)
- A county commission may by Home Rule powers raise its quorum to a number greater than a majority of its members. *State ex rel. Stephan v. Board of Sedgwick County Comm'rs*, 244 Kan. 536 (1989). Cities also have home rule authority to increase their quorum by charter ordinance. See AG Opins. No. 87-45, 83-74. Bodies without home rule authority cannot alter common law rules determining a quorum and may not alter it without specific authority. See also AG Opins. No. 83-174 (change by Airport Authority not authorized); 93-140 (change by Rec. Comm. Not authorized); 96-32 (change by state Dental Board not authorized)
- In mayor-council form of government, the mayor is not included as a member of the body. AG Opin. No. 86-110.

5. For the Purpose of Discussing the Business or Affairs of the Body.

- Binding action or voting is not necessary; discussion is what triggers KOMA. AG Opin. No. 79-200.
- "Meeting" includes all gatherings at all stages of the decision-making process. *Coggins v. Public Employees Relations Board*, 2 Kan.App.2d at 423
- Social gatherings are not necessarily subject to the KOMA; if there is no discussion of the business of the body, one element of a meeting is "missing."
- Retreats and meetings held in private clubs are probably prohibited, especially if site makes it impossible for public to attend without cost. AG Opins. No. 82-133; 80-148
- Members attending a conference where items of general interest are discussed (such as convention of League of Municipalities) are not in violation of the KOMA, as long as the specific business of a body is not discussed. AG Opin. No. 82-133.
- Marriage between two members of a five member city council of a third class city does not violate the KOMA, but they should not discuss city business outside open meeting. AG Opin. No. 87-45

6. Notice of meetings--K.S.A. 75-4318

Notice of meetings must be requested before the public body is required to provide it. K.S.A. 75-4318

- Notice must be given to any person or organization requesting it. AG Opin. No. 86-133. Residence of the requestor is irrelevant. AG Opin. No. 81-137
- Notice request expires at the end of fiscal year; request must be renewed. Must first notify of expiration before terminating notice. K.S.A. 75-4318(b)(3)
- Presiding officer has duty to provide notice, but that duty may be delegated.

Form of Request and Notice

- Oral request is valid (but prosecution is difficult if not honored). AG Opins. No. 81-15; 81-22; 86-133.
- Notice given can be written or oral but must be made individually to the person requesting it. Posting or publication in newspaper is insufficient.
- A single notice can suffice for regularly scheduled meetings. Must notify of any special meetings. AG Opin. No. 83-173

- No fee for notice can be charged. AG Opins. No. 81-137; 82-141
- Petitions for notice may be submitted by groups of people, but notice need only be provided to one person on the list. K.S.A. 75-4318(b)(1). AG Opin. No. 86-133
- No time limit is imposed for receipt of notice prior to meeting. Notice must be given in a "reasonable time," reasonableness depending on the circumstances. AG Opin. No. 81-15
- Contrary to popular belief, the KOMA does not require notice of meetings to be published in a paper.
- To establish a violation for failure to provide notice of a meeting there must have been a prior request for notice. A pattern of providing courtesy notice does not create a duty to provide it.
- A body cannot opt out of KOMA's requirements.

Agendas

- The KOMA does not require that an agenda be created.
- If a body chooses to create an agenda, that agenda should include topics planned for discussion. *Stevens v. City of Hutchinson*, 11 Kan.App.2d 290, 293 (1986)
- Agenda may be amended. *U.S.D. 407 v. Fisk*, 232 Kan. 820 (1983)
- If agendas exist, copies must be made available to those who request them. The agenda does not have to be mailed out and can simply be provided by placing the agendas in a public place. K.S.A. 75-4318(d); AG Opins. No. 79-218; 81-15; 86-133
- Mandamus was proper remedy for board of county commissioner's alleged violations of Open Meetings Act by failing to include planned discussion topic on agenda for meeting. *Klein v. Johnson County Bd. of County Comm'rs*, 77 P.3d 1009 (Kan.App. 2003) (unpublished opinion).

Minutes

- Except for recording motions for executive session, the KOMA does not require minutes. (Local bylaws, ordinances, or policies may.)

7. Open meetings and executive sessions

Open Meetings

- K.S.A. 75-4318 requires open meetings when a body is subject to the act.
- Any person may attend open meetings. AG Opin. No. 80-43
- The KOMA does not require that the public be allowed to speak or to have an item placed on the agenda (but check local ordinances and policies. K.S.A. 21-4101 prohibits disorderly conduct or disturbing a lawful meeting and provides for criminal prosecution).
- Secret ballots not allowed, K.S.A. 75-4318(a). The public must be able to ascertain how each member voted. AG Opins. No. 86-176; 79-167; 81-106; 65-167; 93-55
- Subject to reasonable rules, cameras and recording devices must be allowed at open meetings. K.S.A. 75-4318(e)
- The KOMA does not dictate the location of the meeting, the size of the room, or other accommodation type considerations. The key to determining whether a meeting is "open" is whether it is accessible to the public. AG Opin. Nos. 86-153; 79-253; 82-133; 80-148
- Telephone conference calls are allowed if the requirements of the act are met (i.e. notice and free access). AG Opins. No. 81-268; 80-173; 80-159

Executive Session K.S.A. 75-4319

- Executive sessions are permitted for specified purposes, but first the body must convene an open meeting before public body can recess into executive session. K.S.A. 75-4319(a); AG Opin. No. 81-22.
- Binding action may not be taken in executive session. (K.S.A. 75-4319(c); AG Opin. No. 91-31). Reaching a consensus in executive session is permitted. O'Hair v. U.S.D. No. 300, 15 Kan.App.2d 52 (1991). A "consensus," however, may constitute binding action and violate. KOMA if a body fails to follow up with a formal open vote on a decision which would normally require a vote. City of Topeka v. Watertower Place Development Group, 265 Kan. 148 (1998).
- The decision to hold executive session is discretionary; the KOMA never requires an executive session. (Other laws or policies need to be considered, however.)
- Procedure--K.S.A. 75-4319(a) requires a specific procedure which must be followed in order to go into executive session:
 - Formal motion, seconded, and carried
 - Motion must contain statement of (1) Justification for closure; (2) Subject(s) to be discussed; and (3) Time and place open meeting will resume.
 - Example: "Madam Chairman, I move we recess into executive session to discuss disciplinary action against a student in order to protect the privacy of the parties involved. We will reconvene the open meeting in the conference room at 8:30 p.m."
- Motion for executive session should contain subject and justification statement, which are not the same thing. AG Opins. No. 91-78; 86-33. But see State v. U.S.D.A. 305, 13 Kan. App.2d 117 (1988). The subject is the subject listed in K.S.A. 75-4319(b). The justification is an explanation of what is to be discussed (without revealing confidential information.)
- Executive session motions must be recorded in minutes. K.S.A. 75-4319(a) KOMA does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them. AG Opin. No. 90-47
- Subjects which may be discussed in an executive session:
 - Personnel matters of non-elected personnel to discuss an individual, not groups. AG Opins. No. 81-39; 88-25; 80-102. But see 13 Kan.App.2d 117 (1988). The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure is not a proper topic.
 - "Personnel" means employees of the public agency. AG Opin. No. 87-10
 - Personnel does not include appointments to boards or committees. AG Opin. No. 87-10
 - Personnel does not include independent contractors. AG Opin. No. 87-169
 - The KOMA does not give the employee a right to be present in the executive session or to force an open session. (Other laws or contracts may, however.)
 - This exception may be used to discuss applicants for employment. AG Opin. No. 96-61
 - Consultation with the body's attorney This is for attorney/client privilege so all elements of privilege must be present: a. the body's attorney must be present; the communication must be privileged, and no other third parties may be present. AG Opins. No. 78-202; 80-43; 82-130; 82-176; 82-247; 92-56; Privileged communication is defined at K.S.A. 60-426; Pickering v. Hollabaugh, 194 Kan. 804 (1965)
 - Cannot be used to discuss letter received from attorney if the attorney is not present. AG Opin. No. 86-162
 - Employer-employee negotiation

- Public bodies can meet in executive session to discuss conduct or status of negotiations, with or without the authorized representative who is actually doing the bargaining. AG Opin. No. 79-125
- Public bodies cannot have executive session under this exception when meeting with employees. AG Opin. No. 80-43
- School Boards--special rules: K.S.A. 72-5423(b). AG Opin. No. 92-51.
- Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorship.
- Economic development groups. AG Opin. No. 88-148
- Must be for data truly confidential in nature. See K.S.A. 60-3320; Southwestern Bell Telephone Co. v. KCC, 6 Kan.App.2d 444, 457 (1980), rev. den. 230 Kan. 819 (1981); All West Pet Supply v. Hill's Pet Products, 840 F.Supp. 1433, 1437 (Kan. 1993.)
- Matters affecting a student, patient, or resident of public institutions
- Must concern a particular person (not students in general).
- Hearing must be open if requested by person involved.
- Inmates as residents of institutions, see AG Opin. No. 80-102.
- Preliminary discussions relating to acquisition of real property
- Acquisition only, not sale of property which must be discussed in open meeting. AG Opin. No. 87-91
- This exception can be used only when the primary focus of the discussion is real property; negotiating strategy alone is insufficient. AG Opin. No. 89-92.
- Security, if open discussion would jeopardize security, K.S.A. 75-4310(13), as amended by L. 2005, Ch. 126 §4; any confidential records concerning security discussed in executive session are exempt from subpoena, discovery or other action.
- Who can be present in an executive session-- Only the members of a public body have the right to attend executive session. AG Opin. No. 86-14
- Mere observers may not attend. Inclusion of general observers means the meeting should be open to all members of the public. AG Opin. Nos. 82-176; 86-143; 92-56.
- Persons who aid the body in its discussions may be discretionarily admitted. AG Opin. No. 91-31
- Johnson County school district; members of advisory boards have no right to attend. AG Opin. No. 86-143
- County clerk has no right to attend executive sessions. AG Opin. No. 87-170
- Non-clients cannot attend executive sessions for attorney-client privileged communication. AG Opin. No. 82-247

8. Enforcement of the KOMA

K.S.A. 75-4320 - civil, not criminal, penalties

- Fines - up to \$500 for each violation as determined by the district court -but only if action brought by attorney general or county or district attorney.
- Statute appears to mean that this is \$500 per body member against the member individually.
- Courts generally do not award significant fines.
- Voiding action
- Binding action taken at a meeting not in "substantial compliance" with KOMA may be voided by court.

- Action must be brought by county/district attorney or the attorney general. *Stoldt v. City of Toronto*, 234 Kan. 957 (1984)
- Action to void must be filed within 21 days of the alleged violation/meeting.
- Injunction, mandamus, declaratory judgment: Can be brought by any person or by Attorney General or District/County Attorney. *Stoldt*, 234 Kan. at 963.
- Injunctive relief, rather than mandamus, is proper remedy to address board of county commissioners' past violations of Open Meetings Act. K.S.A. 60-8016. *Klein v. Johnson County Bd. Of County Comm'rs*, 77 P.3d 1009 (Kan.App. 2003) (unpublished case).
- Under the KOMA, a private citizen has the authority to seek injunctive and mandamus relief but no authority to ask the court to void a contract. *Krider v. Board of Trustees of Coffeyville Community College*, 277 Kan. 244, 83 P.3d 177 (2004) See also *Mid-Continent Specialists, Inc. v. Capital Homes, L.C.*, 106 P.3d 483, 279 Kan. 178 (2005).
- Technical violations. The court will not void any action and will overlook technical violations of the law if the spirit of the law has been met, there has been a good-faith effort to comply, there was substantial compliance with the KOMA, no one was prejudiced, and the public's right to know had not been effectively denied. *Stevens v. Board of Reno County Comm'rs*, 10 Kan.App.2d at 526.

9. Procedure

- County/district attorney and attorney general have concurrent jurisdiction to investigate or bring an action. K.S.A. 75-4320
- County/district attorney and attorney general can issue investigative subpoenas. K.S.A. 75-4320b.
- If an individual wishes to bring a possible KOMA violation to the Attorney General's attention, the Attorney General's office traditionally asks that a complaint be submitted in writing, with as much supporting documentation (i.e. minutes) as possible.
- Burden of Proof: Plaintiff has the initial burden to show a prima facie case. Burden then shifts to the defendant to justify its actions. K.S.A. 75-4320a(b)
- Plaintiff may receive court costs if violation established. Defendant may receive costs only if action was frivolous. K.S.A. 75-4320a(c) and (d)
- No requirement of specific intent to violate the law. "Knowing" violation occurs when there is purposeful commission of the prohibited acts. *Palmgren*, 231 Kan. at 536-37
- Venue is proper in the county where the action occurred. K.S.A. 75-4320a(a)
- Courts are to give KOMA cases precedence. K.S.A. 75-4320a(e)

10. Other Consequences

- Violation of the KOMA can be grounds for ouster from office pursuant to K.S.A. 60-1205; AG Opin. No. 80-168. This is a separate action which must be filed by a public prosecutor
 - Alleged violation of the KOMA can be grounds for recall. *Unger v. Horn*, 240 Kan. 740 (1987); K.S.A. 25-4301 et seq. But see K.S.A. 25-4302 grounds for recall; 2003 Amendment calls into question whether Unger Rule has been legislatively changed.
- Ouster or recall not automatic - these actions must be pursued separately.

Federal PL-566 Watershed Protection and Flood Prevention Act

The Watershed Protection and Flood Prevention Act (PL 83-566), August 4, 1954, as amended, authorized the Natural Resources Conservation Service (NRCS) to cooperate with States and local agencies to carry out works of improvement for soil conservation and for other purposes including flood prevention; conservation, development, utilization and disposal of water; and conservation and proper utilization of land.

NRCS implements the Watershed Protection and Flood Prevention Act through three programs:

- Watershed Surveys and Planning
- Watershed Protection and Flood Prevention Operations
- Watershed Rehabilitation

1. Watershed Surveys and Planning

Sponsoring local organizations can request that watershed project plans be authorized for Federal Watershed Operations funding assistance. Watershed plans involving Federal contributions in excess of \$5,000,000 for contribution, or construction of any single structure having a capacity in excess of 2,500 acre feet, require Congressional approval. Other plans can be authorized for Federal funding by the Chief of NRCS. After approval, technical and financial assistance can be provided for installation of works of improvement specified in the plans, subject to annual appropriations, through Watershed Operations.

2. Watershed Operations

Watershed Operations assistance may be provided in authorized watershed projects to install conservation practices and project measures (works of improvement) throughout the watershed project area. The planned works of improvement are described in watershed project plans and are normally scheduled to be installed over multiple years. All works of improvement, including floodwater retarding dams and reservoirs, are owned and operated by the sponsoring local organizations and participating individuals.

- a. Eligibility criteria for authorized watershed projects include:
 - Public sponsorship
 - Watershed projects up to 250,000 acres
 - Benefits that are directly related to agriculture, including rural communities, that are at least 20 percent of the total benefits of the project
- b. Watershed Operations provides technical and financial assistance in authorized watershed projects which have public sponsors who:
 - Conduct public meetings to assure local involvement
 - Obtain all land and water rights and permits required for the installation of works of improvement.
 - Provide local share of funds to install works of improvement
 - Operate and maintain works of improvement
- c. Watershed Operations funds that may be available for watershed projects are subject to the following:
 - Annual Congressional appropriations
 - State and national resource priorities
 - Acquisition of land and water rights, permits
 - Local funding established for specific project measures

- Completion of structural, agronomic, and vegetative designs for project measures
- NRCS and the project sponsor approval of an Operation and Maintenance Agreement involving the measures to be installed

3. Watershed Rehabilitation Information

Local communities, with USDA Natural Resources Conservation Service (NRCS) assistance, have constructed over 11,000 dams in 47 states since 1948. Many of these dams are nearing the end of their 50-year design life. Rehabilitation of these dams is needed to address critical public health and safety issues in these communities.

4. Watershed Rehabilitation Amendments of 2000

Congress passed the Watershed Rehabilitation Amendments of 2000 which amended the Watershed Protection and Flood Prevention Act (Public Law 83-566) and authorized the Natural Resources Conservation Service to provide technical and financial assistance to watershed project sponsors in rehabilitating their aging dams. The purpose of rehabilitation is to extend the service life of the dams and bring them into compliance with applicable safety and performance standards or to decommission the dams so they no longer pose a threat to life and property. The federal government may provide up to 65 percent of funding for rehabilitation projects and project sponsors provide 35 percent.

Contact for the NRCS Watershed Program:

Natural Resources Conservation Service
 State Conservationist
 760 South Broadway
 Salina, Kansas 67401
 (785) 823-4500

Environmental Coordination Act (ECA)

K.S.A. 82a-325 through 82a-327
 1997

K.S.A. 82a-325. Water projects environmental coordination act; purpose. This act shall be known and may be cited as the water projects environmental coordination act. In order to protect the environment while facilitating the use, enjoyment, health and welfare of the people of the state of Kansas, it is necessary that the environmental effect of any water development project be considered before such water development project is approved or permitted.

History: L. 1987, ch. 400, § 1; July 1.

K.S.A. 82a-326. Water projects environmental coordination act; definitions. When used in this act: "Water development project" means any project or plan which may be allowed or permitted pursuant to K.S.A. 24-126, 24-1213, 82a-301 *et seq.*, and amendments thereto, or the multipurpose small lakes program act, and amendments thereto; "environmental review agencies" means the:

- Kansas department of wildlife and parks;
- Kansas forest service;
- state biological survey;
- Kansas department of health and environment;
- state historical society;
- state conservation commission; and
- state corporation commission.

History: L. 1987, ch. 400, § 2; L. 1989, ch. 118, § 192; L. 1991, ch. 290, § 10; L. 1997, ch. 49, § 5; July 1.

K.S.A. 82a-327. Same; review of proposed project; considerations. Prior to approval or issuance of a permit for a proposed water development project, the permitting agency shall obtain a review of the proposed project for environmental effects by the appropriate state environmental review agencies and shall consider their comments in determining whether to approve or issue a permit for such project. The permitting agency may condition the approval of or permit for the project in a manner to address the environmental concerns of the environmental review agencies.

In reviewing a proposed water development project, the environmental review agency shall consider:

- The beneficial and adverse environmental effects of a proposed project on water quality, fish and wildlife, forest and natural vegetation, historic, cultural, recreational, aesthetic, agricultural and other natural resources;
- the means and methods to reduce adverse environmental effects of a proposed project; and alternatives to a proposed project with significant adverse environmental effects.

Each environmental review agency shall send its written comments on the proposed project within 30 days of receipt of the proposal from the permitting agency. Nothing in this act shall be construed as prohibiting a permitting agency from approving or issuing a permit if an environmental review agency determines adverse environmental effects will result if the project is approved or permitted. Nothing in this act shall be construed as preempting or duplicating any existing environmental review process otherwise provided or authorized by law.

History: L. 1987, ch. 400, § 3; July 1.

Obstructions In Streams Act

K.S.A. 82a-301 to 305a
2004

K.S.A 82a-301. Permit or consent of chief engineer required to construct dams or other water obstructions; exceptions. Without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to:

- Construct any dam or other water obstruction
- Make, construct or permit to be made or constructed any change in any dam or other water obstruction
- Make or permit to be made any change in or addition to any existing water obstruction

- Change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

As used in K.S.A. 82a-301 *et seq.*, and amendments thereto, “dam” means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and also has the capacity to impound 50 or more acre feet. The height of a dam or barrier shall be determined as follows:

- A barrier or dam that extends across the natural bed of a stream or watercourse shall be measured from the downstream toe of the barrier or dam to the top of the barrier or dam
- A barrier or dam that does not extend across a stream or watercourse shall be measured from the lowest elevation of the outside limit of the barrier or dam to the top of the barrier or dam.

History: L. 1929, ch. 203, Sec. 1; L. 1978, ch. 431, Sec. 6; April 11; July 1, L. 2002, ch. 138

K.S.A. 82a-301a. Exclusive regulation and supervision of dams and other water obstructions by chief engineer. It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the Kansas department of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property.

History: L. 1978, ch. 431, S. 1; April 11.

K.S.A 82a-302. Same; maps, plans, profiles and specifications to accompany application. Each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, the required application fee as provided in subsection unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief engineer pursuant to this subsection provided such engineer is not an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittal, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and maintenance of dams and other water obstructions. If

the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer's contrary finding. The chief engineer's action in declining to grant such consent or permit and any hearing related thereto shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any order or decision of the chief engineer shall be entitled to appellate review in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. Such applicant shall pay all costs associated with the review by the licensed professional engineer. The application shall be based upon the stage of construction at the time that a complete application has been submitted. The construction in progress fee shall be applicable for construction begun prior to approval by the chief engineer. Such fee shall be in addition to any other penalty for an unpermitted structure. Such fees shall be as follows:

- Fees for new dam or dam modification applications
- Pre-Construction Construction in Progress \$200-\$500

Permit fees for stream obstructions/channel changes application fee is based upon two criteria and are as follows:

- The drainage area category; and the stage of construction when the application is submitted.
- Drainage Area Category Pre-Construction Construction In Progress Major (Drainage area greater than 50 square miles) \$500-\$1000
- Moderate (Drainage area 5 to 50 square miles) \$200-\$400
- Minor (Drainage area less than 5 square miles) \$100-\$200
- General Permit \$100-\$200

All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 75-4215, and amendments thereto.

History: L. 1929, ch. 203, S. 2; L. 1978, ch. 431, S. 7; April 11; July 1, L. 2002, ch. 138.

82a-303. Same; conditions to permits; unlawful acts. The chief engineer of the division of water resources shall have power to grant or withhold such consent or permit or may incorporate in and make a part of said consent or permit such terms, conditions and restrictions as may be deemed by him or her advisable. It shall be unlawful to: (a) Construct or begin the construction of any dam or other water obstruction, or (b) make or begin any change or addition in any dam or other water obstruction, except in accordance with the terms, conditions and restrictions of such consent or permit, and such rules and regulations as may be adopted by the chief engineer of the division of water resources.

History: L. 1929, ch. 203, S. 3; L. 1978, ch. 431, S. 8; April 11.

82a-303a. Rules and regulations by chief engineer. The chief engineer of the division of water resources of the Kansas department of agriculture shall adopt and may from time to time amend rules and regulations in order to establish standards for the construction, modification, operation and maintenance of dams and other water obstructions and to administer and enforce the provisions of this act.

History: L. 1978, ch. 431, S. 2; April 11.

82a-303b. Inspection of dams by chief engineer; access to private property; costs of inspection. In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and the duty to inspect any dam or other water obstruction. Upon a finding pursuant to subsection of K.S.A. 82a-303c, and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until it is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or the dam is removed. The safety inspection shall be conducted by the chief engineer or authorized representative and the cost shall be paid by the dam owner. The class and size of a dam provided for by the provisions of this act shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto. Inspection fees are as follows:

<u>Size of Dam</u>	<u>Inspection fee</u>
Class 1	\$1,500
Class 2	\$1,500
Class 3	\$2,500
Class 4	\$4,000

Each hazard class C dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every three years, unless otherwise ordered by the chief engineer.

Each hazard class B dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every five years unless otherwise ordered by the chief engineer.

Within 60 days of the date of inspection, a report of the inspection shall be provided to the chief engineer by the licensed professional engineer who conducted the inspection. The report shall document the physical condition of the dam, describing any deficiencies observed, an analysis of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

Upon failure of a dam owner to comply with the applicable inspection interval, the chief engineer or such chief engineer's authorized representative shall conduct a mandatory inspection of the dam and the costs as established by this act for the inspection shall be paid by the owner, in addition to any other remedies provided for violations of this act.

The failure to file a complete and timely report as required by the provisions of this act, or the failure to submit the fees assessed for inspections conducted by the chief engineer or such chief engineer's authorized representative shall be deemed a violation of this act and subject to the penalties provided by K.S.A. 82a-305a, and amendments thereto.

For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator of such dam or other water obstruction.

All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in section 5, and amendments thereto.

History: L. 1978, ch. 431, S. 3; April 11; July 1, L. 2002, ch. 138.

82a-303c. Violations of conditions or restrictions of permit or of rules and regulations; orders of chief engineer; remedial measures; emergency situations. Whenever the chief engineer finds that: The construction, modification, operation or maintenance of a dam or other water obstruction is in violation of adopted rules and regulations or of terms, conditions or restrictions of a permit or consent granted by the chief engineer or, conditions exist in the construction, modification, operation or maintenance of a dam or other water obstruction which may present a hazard to the public's safety, he or she shall issue an order to require the correction of any such violation or condition existing in the construction, modification, operation or maintenance of a dam or other water obstruction by the owner or operator thereof. An order may be issued to require the removal of a dam or other water obstruction. The order shall contain the chief engineer's findings concerning any violation or conditions existing and shall prescribe the corrective action to be taken. Whenever the condition of any dam or other water obstruction is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to construction, modification, maintenance or operation thereof, or, the passing of imminent floods threaten the safety of any dam or other water obstruction, the chief engineer shall immediately employ any remedial means necessary to protect the safety of life or property. The chief engineer shall continue in full charge and control of any such dam or other water obstruction until the same is rendered safe or the emergency occasioning the remedial action has ceased.

History: L. 1978, ch. 431, S. 4; April 11.

82a-304.

History: L. 1929, ch. 203, S. 4; L. 1933, ch. 330, S. 1; L. 1978, ch. 431, S. 9; April 11., 102 P.2d 1017; Repealed, July 1, L. 2002, ch. 138.

82a-305.

History: L. 1929, ch. 203, S. 5; L. 1945, ch. 389, S. 1; Repealed, L. 1978, ch. 431, S. 10; April 11.

82a-305a. Unlawful acts; penalties; injunction. Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense. Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin (1) the unlawful construction, modification, operation or maintenance of any dam or other water obstruction, or

(2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction.

History: L. 1978, ch. 431, S. 5; April 11

Tax Reduction Law

WATER STORAGE LAW

-Tax Reduction -

K.S.A. 79-201g and 82a-405 to 82a-410
2004

K.S.A. 82a-405. Construction and maintenance of dams and reservoirs; tax exemption. Any landowner owning land in the state of Kansas, not within the corporate limits in any city in this state, who shall lawfully by the construction of a dam across a dry watercourse or any stream or watercourse draining an area not exceeding 10 square miles, form upon such landowner's own land one or more reservoirs, having along the axis of the dam at the lowest point in the natural bed of a stream or watercourse a depth of not less than 10 feet and a storage capacity at spillway level, including the volume of any excavation in the reservoir area below such level, of not less than five acre feet, for the collection and storage of surface water or flood detention storage, and who shall maintain such dam or dams in a condition satisfactory to the chief engineer of the division of water resources in the Kansas department of agriculture, shall be entitled to an exemption from taxes levied upon such land in the amount prescribed by K.S.A. 79-201g, and amendments thereto.

History: L. 1941, ch. 400, § 1; L. 1957, ch. 538, § 1; L. 1959, ch. 414, § 1; L. 1965, ch. 555, § 1; L. 1968, ch. 239, § 1; L. 1975, ch. 495, § 24; L. 2004, ch. 101, §; July 1.)

K.S.A. 82a-406. Same; approval of plans by chief engineer; construction in accordance with plans. In order to be entitled to the tax exemption provided in K.S.A. 79-201g, the landowner must submit to the chief engineer of the division of water resources, complete plans for such dam showing the area of the drainage basin above the dam; plan, profile and cross sections of the dam and spillway; topographic map of the reservoir basin, and such other data and information as the chief engineer of the division of water resources may require, and such plans shall have the approval of the chief engineer and the dam be constructed in accordance with such plans before such exemption can be claimed.

History: L. 1941, ch. 400, § 2; L. 1975, ch. 495, § 25; July 1

K.S.A. 82a-407. Same; tax exemption, time and procedure. Upon the completion of any such dam to the satisfaction of the chief engineer of the division of water resources, said chief engineer shall certify the completion of the dam and the capacity of the reservoir, giving detailed information concerning the specific land area involved, to the county clerk or county assessor of the county in which the dam is located, who shall annually make such adjustment in the taxes levied against the land as the owner may be entitled to receive under the provisions of K.S.A. 79-201g, beginning with the first period, following the date of issue of the certificate of completion, on which taxes are regularly levied, and during the years which the landowner is entitled to such reduction.

History: L. 1941, ch. 400, § 3; L. 1965, ch. 555, § 2; L. 1975, ch. 495, § 26; July 1.

K.S.A. 82a-408. Same; access to reservoirs when drought emergency declared; rules and regulations. Whenever during periods of drought, it is deemed warranted in the judgment of a majority of the board of county commissioners of any county in this state, the commissioners may by resolution, duly adopted, declare a drought emergency to exist and shall determine where surplus water supplies exist and are available in reservoirs constructed in that county under the provisions of this act and may prescribe rules and regulations for obtaining such surplus waters. The owner of any land on which such a water supply has been or may be impounded, shall, upon being notified by the board of county commissioners, permit entry upon his or her land and access to the reservoir to all persons for the purpose of obtaining water in accordance with the rules and regulations prescribed by the board of county commissioners.

History: L. 1941, ch. 400, § 4; June 30.

K.S.A. 82a-409. Same; donation of land, easements or right-of-way; tax exemption. Any landowner who, otherwise in accordance with applicable provisions of K.S.A. 82a-406 and 82a-407 and acts amendatory thereof or supplemental thereto, in connection with the erection and maintenance of one or more reservoirs for the storage of water and flood detention storage, shall donate to the state or to any of its agencies or subdivisions, land or easements or rights-of-way for such purposes, shall be entitled to an exemption from taxes levied upon the contiguous acreage owned by such landowner to the extent provided in K.S.A. 79-201g. The provisions of K.S.A. 82a-408 shall not apply to reservoirs constructed by the state, its agencies or subdivisions as provided herein.

History: L. 1941, ch. 400, § 5; L. 1957, ch. 538, § 2; L. 1959, ch. 414, § 2; L. 1965, ch. 555, § 3; L. 1970, ch. 407, § 1; L. 1971, ch. 331, § 1; L. 1975, ch. 495, § 27; July 1.

K.S.A. 82a-409a.

History: L. 1959, ch. 414, § 3; Repealed, L. 1975, ch. 495, § 28; July 1.

K.S.A. 82a-410 Same; invalidity of part. In case any section or sections or part of any section of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated but shall remain in full force and effect.

History: L. 1941, ch. 400, § 7; June 30.

K.S.A. 79-201g. Same; lands contiguous to or donated in connection with erection or maintenance of dam or reservoir. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas: All real property which is contiguous to and a part of the same tract of land upon which a dam or reservoir has been constructed and certified by the chief engineer of the division of water resources in compliance with requirements and specifications prescribed by K.S.A. 82a-405 et seq., and amendments thereto, in an amount equal to the increase in the value of such real estate resulting from the construction of such dam or reservoir and in addition thereto an amount computed according to the following schedule:

- First ten acre-feet of storage capacity \$100 per acre-foot
- Next five acre-feet of storage capacity 300 per acre-foot
- Next five acre-feet of storage capacity 200 per acre-foot

- Next five acre-feet of storage capacity 100 per acre-foot
- Remaining acre-feet of storage capacity 50 per acre-foot

The total amount of the exemption for any single tract of land shall not exceed five thousand dollars (\$5,000) or forty percent (40%) of the assessed value thereof whichever is the lesser. No exemption shall be granted hereunder unless the landowner shall apply to the chief engineer of the division of water resources for certification of any dam or reservoir within one year after actual completion thereof. Such exemption shall be applicable to such property for a period of ten (10) years after the original certification of the dam or reservoir; and all real property which is contiguous to and a part of the same tract of land upon which a dam or reservoir has been constructed and certified by the chief engineer of the division of water resources in compliance with requirements and specifications prescribed by K.S.A. 82a-405 et seq., and amendments thereto, the owner of which at the time of such certification donated to the state or to any of its agencies or subdivisions land or easements or right-of-way for such erection or maintenance of such dam or reservoir in an amount equal to twice the assessed value of the land or easements or right-of-way donated. Such exemption shall be based upon a specific description of the land donated, excluding any land the elevation of which is higher than the top of the dam, as prepared and provided by the chief engineer and the assessed value thereof, as determined by the county assessor, for the year in which the exemption is first granted. No exemption shall be granted hereunder unless the landowner shall apply to the chief engineer of the division of water resources for certification of such dam or reservoir and a description of the land donated within five (5) years after actual completion of the dam or reservoir or within two (2) years after such land is listed for taxation if such land was exempt from taxation under the laws of the state of Kansas at the time of the completion of the dam or reservoir whichever is later. Such exemption shall be applicable to such property for a period of twenty (20) years after the original certification of such dam or reservoir by the chief engineer except that if the landowner shall apply for such exemption more than two (2) years after the actual completion of the dam or reservoir such exemption shall be applicable to such property for a period of twenty (20) years after the date of the actual completion of the dam or reservoir.

The provisions of this section shall apply to all taxable years commencing after December 31, 1974.

History: L. 1975, ch. 495, § 8; July 1.

The application for tax reduction can be obtained from DWR – (785) 296-2933

Liability/Tort Claims Act

Accountability is important because as stewards of public funds and a governmental body working with individuals and other entities, legal complications may arise. District directors and employees have protection from liability while discharging their official duties. According to Watershed District Law K.S.A 24-1209, watershed districts may sue and be sued in the name of the district. The Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, requires that the district cover directors and employees if acting within the scope of their duties.

A basic goal of the Tort Claims Act is to protect the directors from being personally sued for their actions or omissions, although the district may still be liable. Claims made against a watershed district cannot exceed \$500,000 for a single incident. A watershed district should obtain its own insurance to provide for its defense or liability for claims. (K.S.A. 75-6111) This

insurance may be purchased from any insurance company. When a district does obtain additional liability insurance the limitation of awards in K.S.A. 75-6105 does not apply if coverage is greater than \$500,000. The limitation will be fixed at the amount for which insurance coverage has been purchased.

According to K.S.A. 75-6102, "employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, with or without compensation. The best way to avoid legal liability is to conscientiously perform the job of director; understand the role and responsibilities, keep accurate minutes, go to board meetings, keep well informed of what the district is doing and stay free of any potential conflicts of interest. DOC staff can help a district determine the best source of assistance or information regarding legal questions. An attorney will be provided by the district's insurance company for most claims, but in the event an attorney is not provided, the district is responsible for their own legal representation.

Note: Although districts are covered under the Tort Claims Act, it is advisable that districts maintain insurance coverage to protect district property from accidental damage or theft and to cover expenses of an injury.

Conflict of Interest Prohibitions

Some district directors or employees are in a position to make or influence decisions that directly affect their personal interests. As managers of public funds, district boards should avoid actions that may be perceived negatively by the public. To avoid a conflict of interest, certain restrictions on activities of district board members must be recognized. The prohibitions outlined in K.S.A. 75-4301 *et seq.* do not prevent a director from dual office holding, nor is there a prohibition from serving as a local official while the agency one serves does business with a local official's private business interests. There is, however, a prohibition from participating as a local official in the making of contracts between the local agency and their own private business interests. **Note:** A dirt construction contractor may serve as a director and construct district cost-shared practices as long as he/she abstains from the voting on or seeking of issues which may provide an unfair advantage in the awarding of contracts.

Filing a Complaint:

Anyone, including the Commission on Governmental Standards and Conduct, can file a complaint against a district official or employee suspected of violating the conflict of interest law. Complaints are filed with the Kansas Commission on Governmental Standards and Conduct, which has jurisdiction over the conflict of interest law. In addition to receiving complaints, the Commission on Governmental Standards and Conduct is interested in any information that indicates that a district official or employee may be violating a conflict of interest law. The Commission on Governmental Standards and Conduct on its own may initiate an investigation of possible violations of the conflict of interest law. Complaints remain confidential during the investigation and become public when the Commission on Governmental Standards and Conduct concludes there is probable cause to believe that a violation occurred. When this decision has been made, a full public hearing is conducted. If, following its investigation, the Commission on Governmental Standards and Conduct concludes that there is insufficient evidence to believe a violation occurred, the complaint is dismissed. By law, such findings remain confidential. When the Kansas Governmental Ethics Commission concludes

there is sufficient evidence to believe a violation occurred, a full public hearing is conducted. Following a hearing, if the Commission decides the facts in the complaint are true, the findings are reported to the appropriate law enforcement agency for prosecution in the courts.

Advisory Opinions

The Kansas Governmental Ethics Commission issues advisory opinions upon its own initiative and upon the request of any person to whom the relevant law applies. Individuals requesting an opinion must write the Commission on Governmental Standards and Conduct listing all relevant facts and circumstances surrounding his/her request. The Commission will not, as a general rule, issue opinions which relate to a possible violation of relevant law by an identifiable third party. Advisory opinions serve to interpret the law and may be especially useful to public servants who are considering an activity that they suspect may involve a conflict of interest. Any person who acts in accordance with the provisions of such an opinion shall be presumed to have complied with the provisions of the conflict of interest law.

Note: The primary point of contact for conflict of interest issues for watershed districts is the Division of Conservation. District employees and directors may however, contact the Kansas Governmental Ethics Commission directly.

Kansas Governmental Ethics Commission
901 S. Kansas Ave
Topeka, KS 66612
(785) 296-4219