



**Before the
Agriculture and Natural Resources Committee
Testimony on HR 6009
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March 3, 2011**

Chairman Powell and members of the Committee, I am Susan Metzger, Manager of the Watershed Coordination Unit of the Kansas Water Office, and I am pleased to appear today in support of HR 6009.

Compensatory mitigation requirements are triggered when an applicant proposes to discharge, dredge, or fill a wetland, stream, or other water of the United States through a Clean Water Act Section 404 permit. According to the Final Rule regarding *Compensatory Mitigation for Losses of Aquatic Resources* published in the April 10, 2008 Federal Register, a site protection instrument is one of the 12 fundamental components of a mitigation plan. The goal of the rule is to ensure long-term protection of these sites through real estate instruments or other available mechanisms.

Both directly and indirectly, the Kansas Water Office has experienced the challenges of implementing mitigation activities when a permanent conservation easement is required. The Kansas Water Office feels that the alternative language proposed in this Resolution will increase landowner participation in mitigation activities while still meeting the goals of the Final Rule.

While not covered in this Resolution, we would like the opportunity to share some other challenges we face with mitigation in the state. In 2008, the Kansas City District of the U.S. Army Corps of Engineers adopted stream mitigation guidance for activities such as filling, impounding, or armoring a stream. Many stakeholders were involved in the development of the guidance. In the first two years of implementation of the guidelines, we are learning of the impact they are having on some construction and water resource projects. Specifically, concerns have also been expressed by watershed districts that their projects are at a disadvantage compared to many other projects due to the length of stream that is typically impacted. Because a large factor in determining mitigation debits is based on stream length impacted, mitigation costs can approach, and sometimes exceed, the cost of the project itself. The Kansas Water Office intends to work with the state and federal natural resource agencies to identify opportunities to address these concerns.

In summary, changes in the implementation of the Final Rule and Stream Mitigation Guidelines could reduce a burden on certain construction activities while still ensuring the proper compensation for loss of aquatic resources. We feel that HR 6009 is a step in that direction.

I appreciate the opportunity to appear today and will stand for questions at the appropriate time.