

**Verbal Testimony in Support of the Multipurpose Small Lakes Program  
Submitted Before the Kansas State Conservation Commission**

Chairman Vorhees and members of the State Conservation Commission, thank you for the opportunity to support the spirit and purpose of the Multipurpose Small Lakes proposed rules and regulations.

As the Mayor of the City of Horton, I am pleased to have the opportunity to give my categorical support in favor of these rules and regulations and, moreover, to lend guidance in the formation of this critical piece of administrative law that has the potential to impact the lives and livelihood of thousands of Kansans.

**Background on Mission Lake.**

In 2000, Mission Lake, a 71-year old lake at that time, was deemed by the Kansas Department of Health and Environment not to meet the Federal Clean Drinking Water Act standards established by the Environmental Protection Agency and enforced by the KDHE. Mission Lake, a victim of extreme sedimentation over its 76-year life, has exceeded total maximum daily load limitations for both phosphorus and atrazine.

During this time, our town struggled to implement emergency water supply and to drill new wells to supply our community with a public water supply. Our community worked together and with state officials and, by 2003, the City of Horton was able to have six total wells in operation.

Those six wells, as is quickly becoming apparent during this current summer, are not performing to engineer and geologist expectations, with an average of 260,000 gallons of peak public water demand during the summer months and only a 280,000 gallon supply from the six total wells being supplied during those days. Rehabilitation of Mission Lake, not unlike many other lakes, is a vital key to not only the economic livelihood of our community, but the livelihood of the citizens of the community.

In a 2004 study conducted by BG Consultants of Manhattan in conjunction with the City of Horton and KDHE, engineering estimates predicted that over the 76-year life of Mission Lake, 2.2 MM cubic yards of sediment had collected in Mission Lake and approximately 1.1 MM cubic yards would need to be removed to make Mission Lake a suitable surface water supply for the City of Horton, its residents and its industry. The original size of Mission Lake was 181 acres, with Mission Lake now being estimated to be 76 acres in size.

The City of Horton and its Commission have been proactive in removing the sedimentation from Mission Lake and making Mission Lake a suitable source of drinking water again. In an April 2005 ballot question, the residents of the City of Horton overwhelmingly, by a measure of 2-to-1, approved the issuance of up to \$4 MM in bonds, with the remainder of the project to be paid by either state, federal or private sources. With a total valuation of just over \$4 MM, this statement was even more indicative: the citizens of Horton overwhelmingly voted to issue bonds that equaled the total valuation of the entire community to restore the vitality of Mission Lake.

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**Priority Ranking for Renovation Projects.**

Proposed administrative regulation 11-4-3(c) proposes a prioritization for funding based on a ranking criteria, being the water supply status of the lake and the backup water supply source.

While it is desirous to give administrative agencies broad authority in interpreting and administering state statutes, ambiguity can also cause loss of efficacy in and disdain for government agencies. I would encourage the Commission to amend the proposed ranking status.

Proposed regulation 11-4-8(c) proposes giving the “water supply status of the lake” the highest priority ranking. This section is unclear as to whether priority will be given to candidate lakes that are currently used as a water supply or as to candidate lakes that were once used as a water supply sources and could again be used for that purpose if restored. I would urge this Commission, in order to fully comply with the Legislative intent of the Multipurpose Small Lakes Program Act’s Clean Drinking Water Fee diversion funding under 2005 House Bill 2313, to clarify this section of the proposed regulations. Additionally, I would urge this Commission to interpret or otherwise amend the proposed regulations so that lakes currently not suitable for drinking water purposes due to sedimentation be given a higher ranking than those that are currently suitable for drinking water sources.

I give these words of encouragement only as a kind recommendation: ambiguity in the law often leads to undesired results, low efficacy in government, and disdain for government agencies.

I otherwise lend my full support for the regulations as proposed by 11-4-8(c).

**Procurement Methodology.**

Proposed administrative regulation 11-4-8(d) states that the “[s]tandard bid procedures of the department of administration and the bid procedures of the commission shall be used in the bidding process for renovation projects.”

After relentless research with the Department of Administration, Horton city officials have been unable to determine the precise procurement methodology used by the Department of Administration, except to assume from previous procurement documents that project procurement is performed on a design-bid-build basis. If this is the intention of the Commission’s proposed regulations, this ambiguity should be clearly stated in the proposed regulations.

More intently, I would urge this Commission to give effect to House Bill 2394, approved by both chambers of the 2006 Kansas Legislature and signed by the Governor on April 5, 2006. This bill gives authority to the State Building Advisory Commission, an advisory committee to the Kansas Department of Administration, to “institute an alternative project delivery program whereby...design-build procurement processes may be utilized on state agency public projects pursuant to [the] act.” While this bill, under the same

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section, excludes design-build as an option for “highways, roads, bridges, dams, turnpikes or related structures, or stand-alone parking lots,” I emphasize that the project proposed by the City of Horton anticipates no renovation of the existing dam. The design-build limitations under HB 2394 clearly do not cover the type of project the City of Horton is proposing and, therefore, HB 2394 would be applicable to the project proposed.

Moreover, after speaking with members from both the House Appropriations and Senate Ways and Means Committees, the Legislative intent of HB 2394 in placing the limitations contained in that bill was not to prevent design-build on lake restoration projects as contemplated by the Multipurpose Small Lakes Program Act and amendments thereto. The Legislative intent, rather, was to protect small concrete contractors from being pushed out of the market place by larger contractors with engineers on staff.

Experience has taught the City of Horton that design-build procurement has several advantages. Mainly, those advantages are (1) the ability of the City to lock the engineer into the price quoted for the project; and (2) to maintain accountability to a single vendor in the circumstance of project malfeasance. Experience has taught the City of Horton that holding a single vendor responsible for the entire project, from beginning to end, ensures accountability and successful project completion.

I would urge this Commission to clarify its rules under this section and to urge the Department of Administration to allow for the procurement of restorations contemplated by the Multipurpose Small Lakes Program Act to be procured via design-build.

**Conclusion.**

With exception to the above sections, I grant my full support for the proposed regulations. In closing, I would like to thank the staff of the Kansas State Conservation Commission for their patience and availability in leading up to this hearing and in formation of these rules and, most of all, the honorable members of the Commission for the opportunity for me to give support for the proposed regulation and to assist in the development of these regulations.

I yield the balance my time and am willing to stand for any questions the members of the Commission may have for me regarding the suggestions have I have made today or any other matters directly related to the City of Horton and/or Mission Lake.

Thank You,

/s/

Dale White  
Mayor, City of Horton, KS

/s/

Levi J. Henry  
City Administrator, City of Horton, KS