

Exhibit 12

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

1994 SCS/NRCS Record of Decision

RECORD OF DECISION
Upper Delaware and Tributaries Watershed
Atchison, Brown, Jackson, and Nemaha Counties, Kansas

PURPOSE

As state conservationist for the Soil Conservation Service, I am the Responsible Federal Official (RFO) for all Soil Conservation Service projects in Kansas.

The recommended plan for Upper Delaware and Tributaries Watershed involves works of improvement to be installed under authorities administered by the Soil Conservation Service. This project includes the installation of 20 floodwater retarding dams, 1 multi-purpose structure with water supply and recreational facilities, 11,000 acres of conservation land treatment, 1,000 acres of riparian and other woodland enhancement areas, 200 acres of riparian easements, and 16 livestock waste management systems.

The Upper Delaware and Tributaries Watershed Plan and Environmental Impact Statement was prepared under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress, 68 Stat. 666, as amended) by the Nemaha-Brown Watershed Joint District No. 7, Kickapoo Tribe of Kansas, Atchison County Conservation District, Brown County Conservation District, Jackson County Conservation District, Nemaha County Conservation District, and the Kansas Department of Wildlife and Parks.

Throughout the planning process, sponsors, the public, and concerned agencies were asked to identify significant water resource and problem considerations in the watershed area. The Soil Conservation Service (SCS), U.S. Department of Agriculture (USDA), the lead agency, was assisted by the Forest Service-USDA and the Fish and Wildlife Service-USDI as cooperating agencies. State agencies assisting included the Kansas Department of Wildlife and Parks, Kansas Department of Health and Environment, and Kansas State and Extension Forestry.

MEASURES TAKEN TO COMPLY WITH NATIONAL ENVIRONMENTAL POLICIES

The Upper Delaware and Tributaries project has been planned in accordance with existing federal legislation concerned with the preservation of environmental values. The following actions were taken to ensure that the Upper Delaware and Tributaries Watershed Plan is consistent with national goals and policies.

Relative impacts of alternatives on environmental, economic, and social factors were analyzed early in planning to determine the significance to decision making and to design the environmental evaluation. As the RFO, I directed that a draft environmental impact statement (EIS) be prepared for this project.

The U.S. Fish and Wildlife Service identified the watershed's threatened and endangered species. The Kansas Department of Wildlife and Parks provided the state's threatened and endangered species list. The Kansas State Historic Preservation Officer reviewed the National Register of Historic Places to determine whether any items of historic significance would be affected by the project.

An interagency team was established for water quality evaluation in the project. Represented on the team were the Environmental Protection Agency, Kansas Department of Health and Environment, Kansas Department of Wildlife and Parks, and Soil Conservation

Service with support provided by the Cooperative Extension Service, Kansas Water Office, Kansas Biological Survey, Kansas Geological Survey, and United States Geological Survey. A public water quality information meeting was held to review water quality conditions, nonpoint source pollutant reduction goals, benefits of improved water quality, and methods of treatment. A consultant for the Kickapoo Tribe prepared a report, "Kickapoo Tribe Water Resources-Cultural and Social Significance."

In June 1989 the watershed district and Kickapoo Tribal Council were asked to update watershed resource and problem considerations as outlined in the watershed district's 1978 general plan. After receiving planning authorization, the scoping process was continued with requests to all sponsors, Bureau of Indian Affairs, Indian Health Service, Kansas Department of Wildlife and Parks, Kansas Water Office, and Kansas Department of Health and Environment. Each was asked to review and rate the problems and concerns in the watershed area and to consider the likely effects of the alternative. They were also asked to list any additional concerns of a significant nature. Other agencies were also notified of planning assistance and were asked for their input in scoping the economic and environmental studies. Each water resource concern was rated as to the degree of impact and significance to decision making completing the scoping process in June 1991. Recommendations from the evaluation were included in the EIS.

An interagency team of U.S. Fish and Wildlife Service, Kansas Department of Wildlife and Parks, and the Soil Conservation Service representatives conducted a wildlife assessment of each of the proposed dams and estimated the type and number of habitat units that would be affected by the dams. This team recommended the habitat value of woodland areas destroyed by the construction of planned floodwater retarding dams or the multipurpose dam be mitigated 100 percent. The value of the herbaceous habitat lost will be partially mitigated. Mitigation will be accomplished by enhancement of existing woodland areas, establishment of new woodland areas, establishment of the dam and spillway areas to mixed native grasses and forbs, and fencing of all dams and spillways to allow for managed grazing.

The following were major problems addressed in the scoping process and analyzed in the Upper Delaware and Tributaries Watershed plan:

- a. Flooding causes damages to local residences and businesses and reduces agricultural income.
- b. Erosion reduces agricultural income.
- c. Gullies void cropland for production, hinder conservation practices, and threaten public transportation system.
- d. The Kickapoo Tribe of Kansas and adjacent areas need dependable water supply and additional recreational opportunities.
- e. Sediment affects Delaware River aquatic species diversity, fills road ditches and farm ponds, and displaces Perry Lake beneficial storage.
- f. Terrestrial wildlife and fisheries habitats are degraded.
- g. Surface and ground water quality standards are impaired.

A draft environmental impact statement was prepared in June 1993 and made available for public review. Recommendations obtained from public participation during planning were considered in the preparation of the statement. Projects of other agencies were included only when they related to the Public Law 566 project, and they were not evaluated with regard to their individual merit.

Approximately 110 copies of the draft environmental impact statement were distributed to agencies, conservation groups, organizations, and individuals for comment. The draft environmental impact statement was filed with the Environmental Protection Agency on June 4, 1993.

All existing data and information pertaining to the project's probable environmental consequences were obtained with assistance from appropriate technical specialists. Documentary information as well as the views of interested federal, state, and local agencies and concerned individuals and organizations having special knowledge of, competence over, or interest in the project's environmental impact were sought. This process continued until it was felt that all the information necessary for a comprehensive, reliable assessment had been gathered.

A complete picture of the project's current and probable future environmental setting was assembled to determine the proposed project's impact and identify unavoidable adverse environmental impacts that might be produced. During these phases of evaluation, it became apparent that there are legitimate conflicts of scientific theory and conclusions leading to differing views of the project's environmental impact. In such cases, after consulting with persons qualified in the appropriate disciplines, those theories and conclusions appearing to be the most reasonable and having scientific acceptance were adopted.

The consequences of a full range of reasonable and viable alternatives to specific project features were considered, studied, and analyzed. In reviewing these alternatives, all courses of action that could reasonably accomplish the project purposes were considered. Attempts were made to identify the economic, social, and environmental values affected by each alternative. Both structural and non-structural alternatives for the project were considered.

The alternatives considered reasonable to accomplish the project's objectives were: (1) no-project action but continue the on-going conservation program; (2) 14 floodwater retarding dams, 1 multipurpose dam, and land treatment; (3) the National Economic Development Plan, on-going land treatment program, 21 dams (including 1 multipurpose), waste management system treatment of 16 confined livestock areas, and riparian woodland enhancement measures, and (4) Alternatives 2 and 3 with 10 additional small floodwater retarding dams. Two other resource protection alternatives were suggested and evaluated that would accomplish part of the objectives of the planned project. The full range of effects was set forth in the alternatives section of the EIS. Individual flood plain management strategies, actions, and programs that would meet some of the project's goals were considered.

CONCLUSIONS

The following conclusions were reached after carefully reviewing the proposed Upper Delaware and Tributaries Watershed project in light of all national goals and policies, particularly those expressed in the National Environmental Policy Act, and after evaluating the overall merit of possible alternatives to the project:

- a. The Upper Delaware and Tributaries Watershed project will employ reasonable and practicable means that are consistent with the National Environmental Policy Act while permitting the application of other national policies and interests. These means include, but are not limited to, a project planned and designed to minimize adverse effects on the natural environment while accomplishing authorized project purposes. Project features designed to preserve existing environmental values for future generations include:
 - (1) establish wildlife habitat compensation areas adjacent to floodwater retarding structures;
 - (2) equip each principal spillway with a valve that allows for releases from the sediment pool for downstream water users during drought or low stream flow;
 - (3) implement fish and wildlife management plans for the reservoirs and natural area cooperatively developed by the sponsors and the Kansas Department of Wildlife and Parks, U.S. Fish and Wildlife Service, and Soil Conservation Service;
 - (4) establish grasses and legumes on dams and borrow areas to protect them from erosion and provide food for wildlife;
 - (5) preserve and enhance riparian areas in the watershed;
 - (6) improve the quality of the water in the Delaware River and Perry Lake;
 - (7) enhance the ecological diversity of the watershed area;
 - (8) accelerate conservation land treatment; and
 - (9) protect ground water resource.
- b. The Upper Delaware and Tributaries Watershed project was planned using a systematic interdisciplinary approach involving integrated uses of the natural and social sciences and environmental concepts. All conclusions concerning the environmental impact of the project and overall merit of existing plans were based on a review of data and information that would be reasonably expected to reveal significant environmental consequences of the proposed project. These data included additional studies prepared specifically for the project and comments and views of all interested federal, state, and local agencies and individuals. The results of this review constitutes the basis for the conclusions and recommendations. The project will not affect any cultural resources eligible for inclusion in the National Register of Historic Places. Nor will the project affect any species of fish, wildlife, or plant or their habitats that have been designated as endangered or threatened.
- c. In studying and evaluating the environmental impact of the Upper Delaware and Tributaries Watershed project, every effort was made to express all environmental values quantitatively and to identify and give appropriate weight and consideration of nonquantifiable environmental values.
- d. Wherever legitimate conflicts of scientific theory and conclusions existed and conclusions led to different views, persons qualified in the appropriate disciplines were consulted. Theories and conclusions appearing to be most reasonable scientifically acceptable, or both, were adopted.
- e. Every possible effort has been made to identify those adverse environmental effects which cannot be avoided if the project is constructed.
- f. The long-term and short-term resource uses, long-term productivity, and the irreversible and irretrievable commitment of resources are described in the final environmental impact statement.

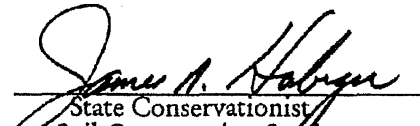
- g. All reasonable and viable alternatives to project features and to the project itself were studied and analyzed with reference to national policies and goals, especially those expressed in the National Environmental Policy Act and the federal water resource development legislation under which the project was planned. Each possible course of action was evaluated as to its possible economic technical, social, and overall environmental consequences to determine the tradeoffs necessary to accommodate all national policies and interests. Some alternatives may tend to protect more of the present and tangible environmental amenities than the proposed project will preserve. However, no alternative or combination of alternatives will afford greater protection of the environmental values while accomplishing the other project goals and objectives.

I conclude, therefore, that the proposed project will be the most effective means of meeting national, state, and local goals and is consistent in serving the public interest by including provisions to protect and enhance the environment. I also conclude that the recommended plan is the environmentally preferable plan.

RECOMMENDATIONS

Having concluded that the proposed Upper Delaware and Tributaries Watershed project uses all practicable means, consistent with other essential considerations of the national policy, to meet the goals established in the National Environmental Policy Act, that the project will thus serve the overall public interest, that the final environmental impact statement has been prepared, reviewed, and accepted in accordance with the provisions of the National Environmental Policy Act as implemented by Departmental regulations for the preparation of environmental impact statements, and that the project meets the needs of the project's local sponsoring organizations, I propose to implement the Upper Delaware and Tributaries Watershed project.

By:


State Conservationist
Soil Conservation Service
U.S. Department of Agriculture

Date:

6/13/94



DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250390-11-5
Upper Del. Tribe

AUG 21 1995

Honorable Alice M. Rivlin
Director
Office of Management and Budget
Old Executive Office Building
17th and Pennsylvania, N.W.
Washington, D.C. 20503

File Code: 390-11

Dear Alice:

We are forwarding for transmittal to Congress, consonant with Section 5 of the Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended, and Executive Order 10654 of January 20, 1956, a watershed plan-environmental impact statement (plan-EIS) for the Upper Delaware and Tributaries Watershed, Kansas.

The Upper Delaware and Tributaries Watershed plan-EIS was prepared by the following sponsoring local organizations with technical assistance from the Department of Agriculture Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service:

Nemaha-Brown Watershed Joint District No. 7
Kickapoo Tribe of Kansas
Atchison County Conservation District
Brown County Conservation District
Jackson County Conservation District
Nemaha County Conservation District

Assistance for the preparation of the plan-EIS was authorized by the Chief of NRCS on May 31, 1991.

The plan-EIS was submitted to the Governor of Kansas and interested Federal agencies for a 60-day review period. Comments have been received from the interested Federal agencies and others. Summaries of the comments and responses are appended to the final plan-EIS. No comments were received on the final plan-EIS. Enclosed are the Record of Decision and fact sheet.

The National Economic Development Plan was selected and consists of the following: (1) 20 floodwater retarding dams, (2) one multi-purpose dam with recreational facilities, (3) 11,000 acres of conservation land treatment, (4) 1,000 acres of riparian and other woodland practices, (5) 200 acres of riparian easements, and (6) 16 livestock waste management systems. Installation of these measures will reduce average annual flood damages in the watershed by \$246,500 (51 percent) and downstream by \$60,600 (20 percent).

Honorable Alice M. Rivlin

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The floodwater retarding dams, land treatment measures, and animal waste systems will significantly reduce nonpoint source pollutants. These pollutants include sediment, nitrates, phosphorus, and fecal bacteria. This plan has been formulated to meet the Kansas water quality standards and has a moderately high probability of success. The floodwater retarding dams and land treatment will also provide flood protection. The multi-purpose dam will provide flood protection, a much needed water supply for the Kickapoo Indian Tribe, and water-based recreation for the Tribe and the surrounding communities.

Ninety-four percent of the benefits of this project are directly related to agriculture. The total storage of two of the structures in the project will exceed 4,000 acre-feet. Therefore, in accordance with Section 2 of Public Law 83-566, copies of this document should be transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives for their consideration.

One copy of the plan-EIS is enclosed for transmittal to the President of the Senate, and another copy is for transmittal to the Speaker of the House of Representatives.

Sincerely,

signed

DAN GLICKMAN
Secretary

Enclosures

Jeffrey R. Vonk, Regional Conservationist, Northern Plains, NRCS, Lincoln, Nebraska
James N. Habiger, State Conservationist, NRCS, Salina, Kansas
P. Scott Shearer, Acting Assistant Secretary, Office of Congressional Relations,
Washington, D.C.