

**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**KANSAS DEPARTMENT OF WILDLIFE, PARKS AND TOURISM**  
**AND**  
**SEDGWICK COUNTY PUBLIC WORKS**

**I. INTRODUCTION**

For numerous years, Sedgwick County Public Works (SCPW) has been submitting stream maintenance and other public works projects to Kansas Department of Wildlife, Parks and Tourism (KDWPT) for review under the Kansas Nongame and Endangered Species Conservation Act. During this time, KDWPT has developed an understanding and trust that SCPW is planning and engineering their stream maintenance and some other minor impact projects in order to avoid or minimize impacts to Kansas state listed threatened and endangered species. As a result, KDWPT and SCPW are developing this Memorandum of Agreement (MOA) to develop a list of Best Management Practices (BMPs) to incorporate in planning and design of these projects and outline exemptions for certain projects meeting criteria listed herein.

**II. PURPOSE**

The parties agree that this MOA provides the basic framework for coordination between both SCPW and KDWPT. SCPW desires to cooperate with KDWPT in the conservation of wildlife resources and KDWPT desires to cooperate with SCPW in stream maintenance projects and other SCPW projects that minimize potential impacts to Kansas Threatened and Endangered Species. Both SCPW and KDWPT desire to enter into this MOA that provides exemptions for projects that meet certain criteria and BMPs (Appendix A) which reduce their impact on wildlife resources. This MOA defines BMPs to be implemented by SCPW. These BMPs are measures that SCPW and KDWPT agree will result in **avoidance, minimization and restoration** of potential impacts to wildlife resources and in some cases apply to particular types of SCPW projects.

**III. LEGAL AUTHORITY**

KDWPT is responsible for the conservation of the state's aquatic and terrestrial wildlife and the habitats upon which they depend to assure a continued heritage of viable and diverse wildlife resources. Both the SCPW and KDWPT acknowledge that the Kansas' Nongame and Endangered Species Conservation Act (K.S.A. 32-957 through 32-963, 32-1009 through 1012, 1033 and K.S.A. 32-960a and 32-960b, and amendments thereto) and the Water Projects Environmental Coordination Act K.S.A 82a-327 and state administrative regulations promulgated thereunder, as key State environmental and wildlife laws, the provisions of which are applicable to SCPW projects.

#### **IV. CONSULTATION AND CONFERENCE PROCEDURES**

This MOA provides an outline by which project-level practices may be determined to be included in this consultation and, therefore, would **NOT** require contact with KDWPT. The concurrence provided in the informal consultation memorandum implementing this MOA is based on the conditions for which covered actions are defined.

1. SCPW agrees to implement BMPs listed in Appendix A to reduce impact on wildlife resources during stream clearing activities and minor impact projects as listed below in IV. 2.
2. Both parties agree that the nature of the following additional activities have minimal impact on wildlife resources and will be exempted from further wildlife consultation and investigation:
  - asphalt and concrete pavement repairs
  - mill and overlays, surfacing and pavement preservation activities
  - lighting and traffic signal improvement and maintenance
  - guard rail installation and maintenance
3. KDWPT agrees to review SCPW projects in a timely manner in order to maintain project schedules, to assist in the wildlife assessment of projects, to coordinate wildlife assessment procedures, and to share with SCPW current wildlife information pertinent to projects overseen and administered by SCPW.
4. KDWPT and SCPW will coordinate projects in accordance with the following procedures:
  - A. SCPW will determine the scope and nature of the anticipated construction activities for projects. If anticipated project construction activities do not meet one or more of the environmental review criteria listed below, SCPW will exempt the project of wildlife concerns and notify KDWPT of the project location and SCPW project number.

##### **Environmental Review Criteria:**

- (1) The project impacts, or is likely to impact, critical habitat of any threatened or endangered species of wildlife listed in the current Kansas Administrative Regulation 115-15-1.
  - a. Exemptions to this criterion include routine stream clearing activities under 5 acres in size and that follow the BMPs in Appendix A.
- (2) The project requires a Nationwide Permit, regional general permit, individual permit or any other authorization from the Army Corps of Engineers.
- (3) The project exceeds the criteria of the Water Projects Environmental Coordination Act.
- (4) The project will impact any public lands for which KDWPT has any administrative authority.

(5) The project will impact public fishing access points or similar high use areas such as those often associated with bridges, low-water dams, etc. These access points may be either publicly or privately owned.

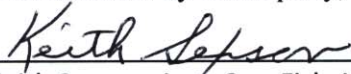
B. If project construction activities are not exempted of wildlife concerns per the criteria described in Paragraph A, SCPW shall request an environmental review to obtain KDWPT comments for the reduction of the project's impact on wildlife resources.

KDWPT will provide SCPW with recommendations for minimizing project impact on wildlife resources and stipulate requirements of the K.A.R. 115-15-3 Action Permit when threatened and endangered species are present in the project area.

4. Project consultation will start at the earliest possible date (when project scope and design details are available) and can be accomplished in meetings, site reviews, by telephone conversation or through correspondence and will continue as necessary.

#### V. TERMINATION AND REINITIATION OF CONSULTATION

This MOA shall be in effect from the date of final signature. This MOA may be terminated at any time by KDWPT or SCPW with a thirty (30) day written notice. Upon the first year anniversary of this MOA signing, both parties agree to consult with each other for adaptive refinement. However, at any time during the term of this MOA, KDWPT or SCPW may determine that circumstances have changed to an extent that additional review is warranted. Such circumstances may include, but are not limited to, species status, new species or critical habitat listing, species management needs, and modification in project design. Upon such a determination by either party, consultation will be reinitiated.

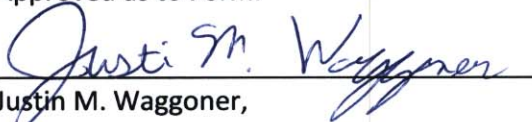
  
Keith Sexson, Asst. Sec. Fish, Wildlife and Boating  
Kansas Department of Wildlife, Parks and Tourism

1-29-2016  
Date

  
David Spears, Director  
Sedgwick County Public Works

1/21/2016  
Date

Approved as to Form:

  
Justin M. Waggoner,  
Assistant County Counselor

## Appendix A Best Management Practices

This Appendix A defines the Best Management Practices (BMPs) to be implemented by Sedgwick County Public Works (SCPW) per the 2016 Memorandum of Agreement (MOA) between SCPW and the Kansas Department of Wildlife, Parks and Tourism (KDWP). These BMPs are measures that SCPW and KDWP agree will result in avoidance and minimization of potential impacts to state listed threatened and endangered species in Sedgwick County, Kansas (Table 1) and in some cases apply to particular types of SCPW projects.

### **BMPs Section 1: Standard Recommendations**

The purpose of this section is to provide BMPs that should be implemented when feasible for construction and maintenance activities. By designing a project with wildlife in mind and incorporating wildlife friendly design, direct, indirect, and cumulative impacts to wildlife can be reduced over the life of the project. Standard recommendations listed below are intended to minimize impacts to all wildlife, including state-listed species and other species in need of conservation. Implementation of these recommendations is encouraged to promote conservation of state fish and wildlife resources. If the BMPs listed below are being followed then the project can be excluded from further consultation as stated in the MOA.

#### **A. Stream Maintenance BMPs**

- Minimize the amount of vegetation cleared. Removal of native vegetation, particularly mature native trees and shrubs should be avoided to greatest extent practicable. Wherever practicable, impacted vegetation should be replaced with in-kind on-site replacement/restoration of native vegetation.
- When access to the streams edge is required to remove stream blockage, impacts to riparian vegetation should be minimized. This includes accessing the stream by entering riparian corridor perpendicular to the stream or along another path so long as the cleared path through the riparian corridor is minimized and ensuring disturbance is no wider than necessary for equipment to enter and back out of the work area.
- Excavators used in removing stream debris will use thumb attachment, allowing the operator to grab and lift woody debris straight up and out of the stream, reducing impacts to the stream bed.
- Woody debris (logs) should not be removed from streams if they are isolated or single logs that are embedded, jammed, or water logged in the channel or floodplain; are not subject to displacement by the current; are not blocking flows; are embedded logs parallel to the channel or stabilizing the streambank.
- Minimize the use of equipment in streams during construction activities and when possible equipment access should be from banks and bridge decks.
- Minimize instream construction during the general spawning dates of April 1 – July 31. Removal of debris that strictly follows the above BMP of utilizing an excavator's thumb attachment while the equipment is operated from the stream bank appropriately minimizes instream activity.
- If altered during stream maintenance activities, restore streambanks and streambed to functional component of the stream system.

- Project activities should occur in such a manner to avoid or minimize damage to any stream, river, or lake from pollution debris, sediment, foreign material or from the manipulation of equipment and or materials in or near such waterways.

#### B. Water Quality BMPs

- Follow NPDES/SWPPP Rules/Regs...Implement and maintain standard erosion-control Best Management Practices (i.e., silt fencing, hay/straw bale ditch checks, erosion-control blankets, storm-drain inlet protection, and temporary weed-free seeding/mulching).
- When feasible, incorporate soft-armoring techniques (e.g., replanting/reseeding appropriate native-seed mixture and native-shrub/tree species) for slope protection.
- As a beneficial conservation practice, incorporate erosion-control blankets that biodegrades within two growing seasons, post construction, into the construction plan (i.e., use blankets, matting, netting made from natural materials such as jute and avoid materials made from polyethylene) (Ideal for placement: along riparian corridors, native prairie habitat, and native woodlands).

#### C. Invasive Species BMPs

- Prevention of the spread of Zebra mussels and other aquatic invasive species is important; all equipment should be thoroughly inspected and cleaned of mud, plant material, or other debris and cleaned with pressurized hot water or allowed to dry for 5 days prior to contacting any other waters of the U.S. to prevent transporting invasive species.

#### D. General BMPs

- During maintenance and repair activities impacted vegetation should be replaced with in-kind on-site replacement/restoration of native vegetation.

Table 1.

Species	State Listed Status
Arkansas River Shiner ( <i>Notropis girardi</i> )	Endangered
Arkansas Darter ( <i>Etheostoma cragini</i> )	Threatened
Plains Minnow ( <i>Hybognathus placitus</i> )	Threatened
Silver Chub ( <i>Macrhybopsis storeriana</i> )	Endangered
Spotted Skunk ( <i>Spilogale putorius</i> )	Threatened
Peppered Chub ( <i>Macrhybopsis tetranema</i> )	Endangered
Whooping Crane ( <i>Grus americana</i> )	Endangered
Least Tern ( <i>Sterna antillarum</i> )	Endangered
Piping Plover ( <i>Charadrius melodus</i> )	Threatened
Snowy Plover ( <i>Charadrius alexandrinus</i> )	Threatened