Dear Representative Miller:

As representative of the one hundred tenth district you inquire whether current law authorizes a drainage district to prohibit or limit discharges into district drainage ditches by an order or an injunction to that effect, obviating the need for 1990 House Bill No. 2623.

You indicate the drainage district was organized pursuant to K.S.A. 24-401 et seq. and is currently unable to
maintain a drainage ditch because a landowner refuses to
schedule drainage from his commercial fish pond at intervals
that would allow the ditch to dry, allowing for bulldozers to
clean and maintain the ditch.

A drainage district is a quasi-municipal corporation, created
by the legislature and deriving its authority from statute.
State, ex rel., v. Drainage District, 123 Kan. 191
(1927). The powers and authority conferred on the drainage
district generally are set out in K.S.A. 24-407. The board of
directors of every drainage district incorporated under this
article have the power:

"(4) To take charge of and exercise
exclusive control of all natural
watercourses within the district, and
widen, deepen, establish, regulate and
maintain the channels thereof, construct
and maintain levees along the banks
thereof and detention dams and. . . .

. . . .

"(9) To maintain in any court of
competent jurisdiction suits to enforce
the reasonable orders of its directors,
enjoin the placing or maintenance in any
natural watercourse of any unauthorized
bridge, embankment, pier or other work or
structure constituting to any extent
whatever an obstruction to the flow of
the water, restrain all other wrongful or
unauthorized encroachments upon or
interference with the channel of the
watercourse and to have all obstructions
wrongfully placed in the channel of
natural watercourses adjudged public
nuisances and abated as such.

. . . .

"(16) To do all other acts necessary to
carry out and execute the general powers
granted under the provisions of K.S.A.
24-401 et seq., and amendments
thereof, although not specifically
enumerated. . . ." (Emphasis added).
Subsections (4), (9) and (16) authorize the exclusive control of the maintenance of ditches, the issuance of reasonable orders and includes powers not specifically enumerated. Additionally, K.S.A. 24-429 charges the board of directors with the duty to keep the works and improvements (such as ditches) in repair. Liberal construction of the act is mandated to encourage the improvement of watercourses and to protect lands from damage and injury by overflow. K.S.A. 24-434. See generally, Wolf v. Second Drainage District, 179 Kan. 655, 665 (1956) (discussing the act in question); 26 Am.Jur.2d Drains and Drainage Districts §36 (1966).

Given the powers clearly set out in the act and the duty imposed to maintain drainage ditches, it is our opinion K.S.A. 24-401 et seq. authorizes a drainage district, organized pursuant to the act, to prohibit or limit discharges that prevent the maintenance of the ditch as required by K.S.A. 24-429. The drainage district is authorized by statute to maintain suits to enforce the reasonable orders of its directors and thus includes the ability to seek an injunction to this effect, obviating the need for 1990 House Bill 2623.

Very truly yours,

Robert T. Stephan
Attorney General of Kansas

Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm