

1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700



900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

**Testimony in Support of SB 48 to
the House Committee on Agriculture
by Susan Metzger, Assistant Secretary
Kansas Department of Agriculture
March 14, 2017**

Good afternoon, Chairman Hoffman and members of the committee. I am Susan Metzger, assistant secretary for the Kansas Department of Agriculture, and I appreciate the opportunity to provide testimony in support of Senate Bill 48.

- SB 48 seeks to address the issue as to whether the state's statutory process for investigating and addressing impairments provides an appropriate means for protecting water rights. KDA is interested in identifying alternatives to best address this issue without reducing the ability of an individual to protect his or her water right.
- In order to achieve this goal, KDA led an interagency and inter-organizational discussion on water right impairment following the 2016 legislative session. This working group included representation from the Groundwater Management Districts, the Kansas Water Authority, Kansas Farm Bureau, Kansas Livestock Association, Kansas Grain and Feed Association, Kansas Corn and others. This working group collaboratively drafted an alternative to the existing processes that a water right owner follows for seeking relief for an impairment complaint.
- During the 2016 legislative session, many of the working group members submitted opposition or neutral testimony to SB 491, which sought to revise the process by which senior water right holder could seek relief from impairment. This testimony generally noted that the working group was considering a preferred alternative method to deal with impairment claims. Impairment was also a topic in the House Committee on Agriculture and Natural Resources last session in HB 2245.
- SB 48 proposes to amend K.S.A 82a-716 and 82a-717a to promote the exhaustion of an administrative remedy. The proposed administrative remedy would serve as a precondition to a senior water right owner's ability to seek an injunction in district court for impairment.
- To ensure the administrative process is timely and responsive, SB 48 places time limits on the chief engineer for initiating and completing an impairment investigation. SB 48 was amended by the Senate Committee on Agriculture and Natural Resources to clarify the time limit for initiating the investigation.
- In the proposed process all parties are afforded the opportunity to submit any relevant information, including engineering studies, for consideration by the chief engineer in the investigation.
- SB 48 allows for the complainant to request a temporary order to limit or prevent the pumping of water by the junior water right owner while the chief engineer conducts the investigation. The temporary order

would only be issued if the chief engineer finds that there is a substantial likelihood of impairment and that the prevention or limiting of water use would not be averse to the public interest. SB 48 was amended by the Senate Committee on Agriculture and Natural Resources, adding the word “prevent” as an option along with the existing bill reference to the words “curtail” and “limit.” The use of these words completely describes the types of orders that may be issued by the chief engineer to address impairments.

- SB 48 clarifies the administrative process available to senior water right owners by allowing them to more fully protect their property rights through the administrative process conducted by the chief engineer, including review under the Kansas judicial review act.

In conclusion, KDA supports SB 48, including the amendments proposed by the Senate Committee on Agriculture and Natural Resources. This bill reflects a collaboratively developed alternative to the water right impairment investigation and remedy process.

Thank you for the opportunity to present testimony. I will stand for questions at the appropriate time.

As proposed in SB 48:

(A) Within two weeks of receiving a complaint of impairment, the chief engineer shall investigate such complaint, and as part of the investigation shall provide an opportunity for both parties to submit any relevant information, including submission of an engineering study that meets such standards as may be designated by the chief engineer through rules and regulations.

Replace with:

(A) Within two weeks of receiving a complaint of impairment, the chief engineer shall **initiate an investigation of such complaint and provide notice of same to the complainant and the allegedly impairing party or parties**, and as part of the investigation shall provide an opportunity for all of the parties to submit any relevant information, including submission of an engineering study that meets such standards as may be designated by the chief engineer through rules and regulations.

As proposed in SB 48:

(3) Concurrent with the submission of a complaint under paragraph (2), or during the pendency of the chief engineer's investigation pursuant to the complaint, the complainant may petition the chief engineer to use a temporary order; to be effective until a final order is issued under paragraph (2)(B), that limits or curtails the diversion and use of water by any person without a prior right to the same water upon a finding by the chief engineer that a substantial likelihood exists that impairment is occurring or will occur and that an order limiting or curtailing diversion and use of water by any person without a prior right to the same water would not be adverse to the public interest.

Replace with:

(3) Concurrent with the submission of a complaint under paragraph (2), or during the pendency of the chief engineer's investigation pursuant to the complaint, the complainant may petition the chief engineer to use a temporary order; to be effective until a final order is issued under paragraph (2)(B), that limits or **prevents** the diversion and use of water by any person without a prior right to the same water upon a finding by the chief engineer that a substantial likelihood exists that impairment is occurring or will occur and that an order limiting or **preventing** diversion and use of water by any person without a prior right to the same water would not be adverse to the public interest.