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Proponent Testimony to the Committee on Agriculture and Natural Resources

Representative Hoffman
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Committee, I am Kirk Heger President of the Southwest Kansas Irrigation Association (SWKIA). Our association consists of irrigators, agribusiness, and other water users in Southwest Kansas.

We are providing comments in favor of Senate Bill 48.

Our membership believes water right owners in Kansas need surety in their property rights. This means they need to know that their water rights mean the same today as when they were granted. Senate Bill 48 will help accomplish consistency in property rights surety.

Our members are of the opinion that SB 48 is an appropriate approach to resolving disputes about water rights that preserves the priority of senior water right owners, while improving due process for junior water right owners. This is the work product result of many stakeholders and we applaud this common sense revision.

We believe that the current system that allows the omission of the experts and data available to the Chief Engineer by going directly to the district court needs this improvement. The use of the administrative impairment procedure found in K.A.R. 5-4-1 which allows input from those affected, before having these matters taken up in a court proceeding, is a clear improvement.

This measure also provides for consistency in defining impairment by inserting the same definition of the legislature for granting new or changed water rights into the injunction statute. This will help insure that courts will not use a different definition than the legislature and the state agency, which can change the granted property rights.

It also maintains the important ability for a senior water right to seek judicial remedy, but the senior water right must first file a complaint with the Chief Engineer. Once the administrative process with the Chief Engineer is exhausted, the senior or junior water right owners may appeal the Chief Engineer's decision to district court. Retaining the ability to seek district court review of any impairment decision is key because water rights are property rights, which have certain constitutional protections.

Southwest Kansas Irrigation Association believes SB 48 is necessary to provide confidence and surety in Kansas property rights and more specifically water rights. Thank you for your attention to this matter.

Regards

Kirk Heger
President SWKIA