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J. RUSSELL JENNINGS
122ND DISTRICT

HB 2245
2015 Special Committee on Agriculture and Natural Resources
October 22, 2015

Madam Chair and Members of the Committee:

My constituents and I believe that this bill has considerable merit to foster the uniform and orderly administration of water rights in Kansas. In particular, as a former judge, I know that it is far too easy to acquire temporary orders in many types of cases. Injunctions under K.S.A. 82a-717 have occurred and without Legislative guidance, may inundate the Courts as we have experienced a steady and substantial decline in the static water level of the Ogallala aquifer since 1945. To that end, the fiscal note attendant to this bill may understate the anticipated benefits to help reduce the workload of the Judiciary reference water rights cases. In other words, clear legislative policy will avoid costly and time consuming litigation.

It is particularly important for irrigators and farmers of my District to have a clear understanding of the word 'impairment' as used in the application statute and the enforcement statute. The potential vacuum caused by inaction of the Legislature could lead to Court imposed definitions which may or may not be suitable for policymakers and the Department of Agriculture who is generally charged with administering the water law in Kansas. We know well that the courts will come to conclusions other than those we intend when there is a lack of clarity of legislative intent. Thus, there is a need for Legislative action.

It appears to me that HB2245 attempts to accomplish 4 main goals:

First, to get the Court system out of the 'impairment' business when the interested parties are using water in conformity to an authorized permit from the Division of Water Resources. Please note that HB2245 does not limit the Court's jurisdiction to hear cases and issue temporary or permanent injunctions when the use of the water is contrary to an existing permit, e.g. over use or an unauthorized use.

Second, the Legislature should define 'impairment' for enforcement purposes the same way the statute was changed in 1957 for the application statute.

Third, in cases where the parties and the Court wish to use the Chief Engineer as a 'referee' there should be some rules of order for the Chief Engineer and a mechanism for orderly review

Attachment 13
SCANR 10-22-15

of the report of the Chief Engineer. The report is not self-proving or admissible in evidence unless same meets the scientific standards for admissibility under the rules of evidence.

Fourth, in cases where the parties and the Court wish to use the Chief Engineer as a 'referee' then in such event, the Chief Engineer, nor the Court may circumvent the administrative process to alter, amend, change or modify existing appropriation rights.

Protection of property rights is of paramount importance. In cases of claimed impairment the property rights of at least two parties are at risk. I believe we must assure that neither party is placed at unnecessary risk of having operations dependent upon their water right disrupted without an opportunity to be heard and with sufficient credible and scientifically based evidence.

Water law is complicated and this issue deserves full consideration by the legislature. I encourage the committee to recommend further study and deliberations during the regular session so that all parties of interest have an opportunity to contribute to a comprehensive and appropriate decision regarding these matters.

Respectfully Submitted,

J. Russell Jennings
Representative 122nd District