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Proponent Testimony to the Special Committee on Agriculture and Natural Resources

Rep. Sharon Schwartz : Chair

Sen. Garrett Love: Vice Chair

October 22, 2015

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 HB 2245.

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. HB 2245 will help accomplish consistency in property rights surety.

Currently very little protection exists for water right owners against a court ordered injunction at the request of any single water right owner having an earlier appropriation date. An injunction can be issued with no administrative process. Court ordered injunctions are too easily available, and with almost no evidence of impairment as the term is used in state administrative quasi-judicial application review processes.

No consistent criteria exists for courts to use agency administrative standards for acting on junior water right applications or investigating impairment complaints under rules and regulations promulgated to implement the water appropriation act or the groundwater management district act. In the rule and regulation adoption/promulgation process, public interest and reasonableness were certainly considered and implemented.

The added language in Section 1(b) of HB 2245 addresses this concern. Note that to be complete in the intent, the list of water right aspects in this section should include a "(5) within the authorized place of use."

Attachment 14
SCANA 10-22-15

Paragraph (c) continues with needed language to further assure that a validly approved, constructed and operated water right preserves needed protections. It requires that a party that is seeking a permanent injunction follow the standards adopted by the chief engineer in his rules and regulations, including fully accessing the aquifer supply available.

Paragraph (d) is most important. We believe a reasonable overall decline in the aquifer was recognized and adopted as policy of the legislature in 1957 by requiring the chief engineer to condition water rights. Previously appropriated water rights must tolerate some reasonable effect by newly appropriated water rights as new water rights were developed and water was put to beneficial use. Local GMD's further developed reasonable standards for this policy that were adopted by the chief engineer to determine when water was available for appropriation in those organized groundwater areas.

In southwest Kansas, that standard for many years was water above what would deplete the aquifer static water level 40% or more in 25 years. Injunctions should not be placed on an individual specific water right in a geographic area of overall general declines based on concern over any potential effect when a reasonable affect has been the legislative standard for administrative actions. Especially when there is no act of concern by the agency charged with the administration of the water rights.

Paragraph (f) is essential in providing consistency in defining impairment as it inserts the same definition of the legislature for granting new or changed water rights into the injunction statute to avoid the likely outcome that courts will use a different definition than the legislature and the state agency, which can change the granted property rights.

The proposed changes to 82a-725 are necessary to assure a high standard for accountability in the facts, opinions and public interest considerations presented to a court and the local community of water users that may be affected. It also preserves the policy of the legislature that rights are determined in an administrative process for which the terms, limitations and considerations of such rights are reliable after state agency final action.

Southwest Kansas Irrigation Association believes HB 2245 is necessary to provide confidence and surety in Kansas property rights and more specifically water rights. Thank you for your attention to this matter. I am available for questions when appropriate.

Regards,

Kirk Heger
President SWKIA