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To: Senate Committee on Agriculture and Natural Resources  
Sen. Dan Kerschen, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: **SB 46 AN ACT concerning water; relating to water conservation areas.**

Date: February 14, 2017

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing nearly 5,200 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.*

Thank you, Chairman Kerschen and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA appreciates the opportunity to appear as a proponent of SB 46. If passed, SB 46 will provide livestock facilities more flexibility in use of the facilities' existing water rights under a Water Conservation Area (WCA), while also advancing the goal of groundwater conservation.

SB 46 is needed to solve a water-use distribution issue facing many KLA members who operate cattle feedyards and dairies. Most feedyards or dairies have one integrated water distribution system, but a number of different wells. Over the years, as feedyards and dairies grew in size, wells servicing the facilities were not equally spaced across the facilities' footprint. When irregularity of well spacing is combined with variations in terrain and saturated thickness, it results in some wells in a facility's distribution system out-performing other wells. This makes it difficult to operate a multiple-well, integrated water distribution system within the individual authorized quantity of each water right. One well may exceed its annual authorized quantity, while another well, due to pressurization issues, is substantially under-pumped at the end of the year.

As a result of these challenges, KLA began working with the Kansas Department of Agriculture (KDA) to develop a solution. The original solution was to create a stockwatering facility permit using term permits authorized under K.S.A. 82a-708c. This solution, however, posed certain complications. First, certain areas of the state are limited to one-year term permits. Second, numerous stakeholders did not believe term permits were the best route for achieving the goals of the livestock facilities.

The next solution KLA examined with KDA was use of a WCA. While the current WCA law requires a livestock facility to adopt a "corrective control" to gain added flexibility, current law

also requires use of a term permit. To avoid use of term permits, the amended language in SB 46 starting on page 3, line 11, and running through page 4, line 3 was devised.

The changes to subsection (e) of K.S.A. 82a-745 eliminate the need to use a term permit in conjunction with a WCA. In place of a term permit, SB 46 establishes a water management plan. The management plan may: “allow, in any given calendar year, the water use of an individual water right or rights to exceed the annual authorized quantity of the individual water right or rights participating in the management plan, provided that the water use shall not exceed the total annual authorized aggregate quantity and rate of all the water rights participating in the management plan in any given calendar year . . . .” This provision is key to allowing livestock facilities to flexibly manage water rights in an integrated distribution system.

The WCA management plan will supersede the underlying water rights during the pendency of the management plan. This is similar to the process used for Multi-Year Flex Accounts (MYFAs). It does not create a new water right because water is not perfected under a management plan. The management plan will receive junior priority the day it is approved. Furthermore, management plans shall not be allowed to cause an impairment of more senior water rights. Given the management plan’s junior priority, every water right will be senior on the day the WCA is approved. Prior to implementation, KDA Division of Water Resources (DWR) will evaluate the management plan to ensure it will not change how existing wells interact with more senior neighboring wells. If an impairment is found at any point during the operation of the management plan, the Chief Engineer may suspend the management plan, and the participating water rights will revert back to the original authorizations.

The flexibility of a WCA management plan is not without a cost to the participant. A requirement of any WCA is inclusion of one of five corrective controls listed in K.S.A. 82a-745(b). *See* SB 46, page 2, lines 17 – 35. These corrective controls could include installation of more efficient livestock watering tanks or water recycling systems, or use of more efficient forage crops to reduce water usage by a livestock facility’s irrigation wells. It is important to retain the WCA law’s current flexibility in designating corrective controls because not every livestock facility is the same situation in regard to its water rights.

Water rights participating in a WCA must continue to follow all groundwater management district (GMD) regulations, unless the provisions of the WCA “result in greater overall conservation of water resources” as determined by the Chief Engineer. *See* SB 46 page 3, lines 2 – 10; *see also* SB 46, page 4 lines 4 -15. If a GMD disputes the Chief Engineer’s determination of “greater overall conservation of water resources,” the GMD retains its ability to provide a written recommendations to the Chief Engineer prior to finalization of a WCA. *See* SB 46, page 4, lines 7 – 10. Finally, to ensure notice to any water right owner who might be affected by a WCA, SB 46 requires that DWR give notification to all water right owners within one-half mile of the boundaries of a proposed WCA upon the Chief Engineer receiving a complete WCA proposal.

KLA believes the amendments to the current WCA law contained in SB 46 will provide added flexibility for water use at a livestock facility, while advancing the cause of water conservation. KLA supports SB 46 and asks the Committee to approve it favorable for passage when it considers the bill.