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**Testimony in Support of SB 46 to
the Senate Committee on Agriculture and Natural Resources
by Susan Metzger, Assistant Secretary
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Good morning, Chairman Kerschen 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 46.

- Water Conservation Areas (WCAs) were created by statute (K.S.A. 82a-745) in 2014 to provide a simple, streamlined and flexible tool that allows any water right owner or group of owners the opportunity to develop a management plan to reduce withdrawals in an effort to extend the usable life of the Ogallala-High Plains aquifer.
- There are many benefits to forming a Water Conservation Area. Conserving water resources extends the usable lifetime of the water supply, allowing either for a transition to limited irrigation or for continued beneficial use of the water for a greater length of time into the future. Participation within a WCA may also afford flexibilities that are not available to water right owners outside of a WCA. These flexibilities may include creating multi-year allocations, allowing the movement of allocations between enrolled water rights, or allowing the application of water for new use types (i.e. irrigation, stockwatering, etc.).
- To date five WCA management plans have been approved: Finney, Stanton, Sherman, Wichita, Scott and Lane counties. Many more water right owners are actively evaluating the benefits of a WCA for their operations.
- Current WCA law provides that the chief engineer may make use of single- or multi-year term permits in order to effectuate conservation goals identified in a WCA management plan. Discussions between the KDA, Kansas Livestock Association, Kansas Farm Bureau, Groundwater Management Districts, and other stakeholders led to the identification of needed changes to the WCA law to highlight and clarify the “flexibility” component of WCAs. SB 46 addresses the feedback and input resulting from these stakeholder discussions.
- The amendments, as proposed in SB 46, provide that a WCA management plan may allow for individual participating water rights’ authorized quantities to be exceeded, within certain limitations pertaining to safe yield and rate of diversion, and provided that the aggregate total authorized quantity of all participating water rights is not exceeded within any given year.
- SB 46 also clarifies how WCAs are treated for purposes of priority, and providing protection and certainty in the event of an impairment concern. In addition, the proposal does not authorize any “new” water and any WCA must still include “corrective controls” in accordance with K.S.A. 82a-745(a)(5).

- Current WCA statute limits the availability of the tool to areas in need of conservation as defined by K.S.A. 82a-1036(a). Feedback from water right owners suggests that a broader definition is need to allow for the use of the WCA tool over additional areas of the Ogallala-High Plains aquifer. SB 46 proposes to expand the definition of areas in need of conservation to also include any area closed to new appropriations by rule or order of the chief engineer (see balloon amendment).
- SB 46 proposes to clarify the public outreach and notification process conducted currently by practice of the department to ensure neighboring water right owners are informed of WCA plans and the associated water right flexibilities.
- The Kansas Open Records Act (KSA 45-221, Subsection (a)(20)) allows a public agency to keep closed notes, research data in the process of analysis, drafts, recommendations or other records in which opinions are expressed, or policies or actions proposed. The development of a WCA is a personal management decision and it is the position of the agency that it will respect the landowner's privacy until the point that a management plan is ready to be drafted.
- SB 46 also proposes to remove the requirement for the adoption of rules and regulations to effectuate and administer the provisions of the WCA statute. The proposed amendments identified in SB 46 provide the level of detail and transparency that would be accomplished via rules and regulations and therefore the rules and regulations would no longer be needed. Any addition level of detail such as conservation criteria or maximum distances of allocation moves would unnecessarily limit the application of this conservation program and would counter the goal of providing water right owners the flexibility needed to accomplish their water use reduction goals.

In conclusion, KDA supports SB 46, a bill that is the result of direct interaction between agricultural stakeholder organizations and members of groundwater management districts.

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

As proposed in SB 46:

Sec. 2 (a)(5) include goals and corrective control provisions to address one or more of the circumstances specified in K.S.A. 82a-1036(a) through (d) and amendments thereto, *or include a finding or findings that the area within the geographic boundaries described in paragraph (1) has been closed to new appropriations by rule, regulation or order of the chief engineer;*

Replace Sec. 2 (a)(5) with:

include goals and ***one or more of the*** corrective control provisions ***listed in (b) of this section*** to address one or more of the circumstances specified ***in paragraph (3);***