



Southwest Kansas
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Testimony as a proponent of SB 48
Provided To
The Senate Ag & Natural Resources Committee
By Mark Rude, Executive Director
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Chairman Hoffman and members of the committee, I am Mark Rude, Executive Director of the Southwest Kansas Groundwater Management District No. 3 (GMD3). The GMD3 is the local agency to manage, conserve and further develop the groundwater resources in the Southwest 12 counties of Kansas. We stand in support of SB 48.

Impairment of private property water rights, as they are defined in Kansas Water Law, is a huge concern in GMD3 board considerations for the rules and laws governing groundwater management. Probably the single most significant question that has driven the organization and reform of Kansas water laws from statehood in 1861 through today relates to how we Kansans evaluate what constitutes impairment of water rights? Where there is water enjoyment and not sufficient water, there is dispute over water rights. Past approval of too many water rights without agreeable rule standards was the driving force behind the passage of the Groundwater Management District Act in 1972.

SB 48 provides an orderly path for water right owners to seek relief for any impaired water right claim to secure protection of a water supply first by administrative action with the chief engineer and the Division of water resources. This builds an administrative record and fact finding. Then, if necessary, a complainant may seek relief in a court. A water right impairment case in Haskell County together with a recent Finney County case each involved Court actions first. The court, in each case, dictated the chief engineer and DWR services and fact finding outside of the administrative rules developed to address such matters, which includes the opportunity for administrative assistance and comments by the GMD3. Developing an administrative solution first may be a more efficient and cost affective outcome.

It is well accepted that the Kansas Water Appropriation Act (KWAA) endowed the chief engineer with certain statutory authority over the waters of Kansas to grant, protect, and administer water rights according to the doctrine of prior appropriation ("First in time is first in right"). The KWAA placed the chief engineer under a statutory duty to grant applications for water rights and changes to those rights provided that the water is available beyond what is needed to satisfy earlier rights and not impair them. Those water rights receive the full protections of the chief engineer. If the chief engineer and DWR fail to do this administratively, then the court becomes the next step under SB 48.

The KWAA dedicated "[a]ll water within the state of Kansas . . . to the use of the people of" Kansas, and charged the chief engineer to administer the KWAA "for the benefits and beneficial uses of all of its inhabitants," not just present water right owners, requiring him to limit his

permission according to the public interest. Historically, that has proved to be difficult without stakeholder assistance. That public interest was then further provisioned in the rights delegated under the Groundwater Management District Act of 1972 and accepted in the formation of the GMD3 through an adopted management program and policy recommendations of an elected board of directors. That legislative policy of local control works well for Kansas even today.

It has been at times asserted that DWR does not assess the long-term availability of the groundwater supply in evaluating new groundwater applications, changes and new flex management plans, preferring to rely on real time status quo supply availability. Administratively, we can address this issue with greater efficiency and predictability under a DWR water right and GMD3 aquifer management collaboration and avoid unnecessary and inefficient constraints imposed under great cost by a court.

Thank you for allowing us to participate in today's hearing. I will stand for questions at the appropriate time.