

***Kansas Farm Bureau
Policy Statement***

**Senate Agriculture Committee
SB 148; An act concerning water**

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Submitted by:

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Chairman Taddiken and members of the committee, thank you for this opportunity to provide testimony on Senate Bill 148 as it relates to dividing water rights. I am Kent Askren, Assistant Director of Natural Resources for the Kansas Farm Bureau. As written, KFB stands in support of the concepts in SB 148 while we continue working with the agency on specific language.

The Division of Water Resources has been responding to water right holder's requests to assign specific interest in water rights for years. This is often referred to as "administratively dividing" a water right or "determination of interest". This has been done most often by issuance of an Order specifying the partition of the right at the owner(s) request. There are a few principles we must contemplate as we evaluate the proposals in SB 148.

First, a water right is a real property right as defined in the Kansas Water Appropriation Act. This means that in most cases the water right belongs to the owner(s) of the property upon which the water right has been developed. The water right can be severed from the property by its owner(s) and conveyed by deed, lease, mortgage, will or other voluntary disposal or by inheritance.

It is not uncommon for a water right to be attached to multiple properties or to have multiple points of diversion (wells). When the right was established or perfected it might have been by an individual or group working a common operation but over time things changed so that the water right as established no longer meets the long term operational needs of the owners involved today.

Consequently, the water right as a whole needs to be broken up into portions which are representative of the owner(s) desire to assign fractions of the water right as he/she deems appropriate. The division is up to the owners discretion provided the determination does not conflict with how the right has historically been utilized. At the end of the day, the sum of the pieces must equal the whole.

Since we are dealing with either Vested water rights or Certified water rights, the extent to which these rights have been developed is already known. Consequently, we do not want to confuse a water right division with a request to change a water right as determined under K.S.A. 82a-708b pertaining to modifying a water rights place of use, point of diversion or use made of water.

Water right owners should feel confident that their request to divide a water right assigning priority, quantity, rate, point of diversion and place of use; all in conformity with the right as established will be acted upon affirmatively by the chief engineer.

The original language in New Section 1 of SB 272 used terms like "apply" and "approve" which gave us concern that dividing a water right was something more than just documenting how the owner(s) wanted the right portioned. Removing these terms and replacing them with words like "notify" and "order" gives us more comfort in insuring the owners wishes will be properly acted upon.

Thank you for this opportunity to provide testimony, I would be happy to answer questions at the appropriate time.