



Southwest Kansas
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Proponent Testimony on SB491
Senate Committee on Natural Resources
Southwest Kansas Groundwater Management District No. 3
By Mark Rude, Executive Director
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Chairman Powell and members of the committee, thank you for this opportunity to testify on SB491 as a proponent of the six key provisions of the bill relative to the Water Appropriation Act (WAA) and the Groundwater Management District Act (GMDA).

Without the elements of SB 491:

- 1) There is no orderly coordination** prescribed between state regulation needs that may affect aquifers and local groundwater management program rights declared by the legislature;

SB 491 provides needed coordination between the responsibilities of state agents and the rights conveyed to local groundwater management districts with established groundwater management programs. The Kansas legislature acted in 1972, before appropriation rights were mandated, to declare local rights to manage groundwater in the public interest through first adopting management programs. Establishing and revising rules that effect local groundwater management programs should follow the Groundwater Management Program Act process for revising the management program. This is part of the 2015 Kansas Water Vision guiding principles and keys to success.

- 2) There is no completion of available administrative relief** before judicial action regarding orders of the chief engineer and DWR, like the administrative procedures assured in KCC processes;

SB 491 ensures that agency administrative order complaints will be resolved to the extent possible administratively before action occurs judicially.

- 3) There is no expectation that the public learn of the actions** of the chief engineer, and no requirement of the agency that citizens with property rights that may be affected by agency action be notified and given opportunity to be heard;

SB 491 improves public education on water rights as a recognized need in the state water vision document. Historically, Kansas has been lite on the administrative front side with heavy deference to the courts for protecting personal property rights. Any procedural due process of DWR or of a Kansas court should be to protect persons not from the deprivation of a water right, but from the mistaken or unjustified deprivation of their water right. This can be assured through better water user notice and public information posting of filings and results. Note the Oregon example for DWR web postings at: http://apps.wrd.state.or.us/apps/misc/wrd_notice_view/default.aspx?notice_id=21

4) Political patronage or personal favor may identify the next chief engineer;

SB 491 excludes K.S.A. 74-506d (the chief engineer position and staff) from the provisions of HB2391 passed last session. Civil service is the designation given to government employment for which a person qualifies on the basis of merit rather than political patronage or personal favor. If the present state employee occupying the position of chief engineer were to leave the position, from action last session the position may be declassified under Kansas civil service law changes last session to serve at the pleasure of the employing agency head. The long standing provisions of K.S.A. 74-506d should be restored in Kansas law.

5) There is out of date and confusing language on historically removed common law water rights in the Water Appropriation Act;

Common law water rights language persists in statute, but with no definition and no administrative place in the WAA. From 1945, state policy has been that subject to Vested Rights, all waters of the state may be appropriated as prescribed in the WAA. The legislature shut the door on the determination of non-domestic vested rights in 1978, providing in K.S.A. 82a-704a(f) “No vested right for the beneficial use of water, other than for domestic use, shall be deemed to exist from and after July 1, 1980, unless the same has been determined to exist pursuant to the provisions of this act or pursuant to the provisions of K.S.A. 82a-704.” There may be federal common law rights of sorts under federal laws, but there are none for Kansas citizens under the Water Appropriations Act. The old language no longer has a role under Kansas law and SB 491 would clean up these references.

6) There is no assurance for the chief engineer to referee the distribution of available Kansas water under state regulations in deference to a court proceeding and no requirement of a court to consider what the chief engineer must consider in judging water right impairment investigations.

SB491 ensures the even handed application of government power over private property. It also preserves the terms under which water rights have been expertly established administratively.

7) There is no provision for a groundwater management district to give management program input as a non-party to the facts and opinions of a non-party chief engineer report to a court.

SB 491 was crafted to address significant need for updates, orderly process and consistency in the implementation of policy relating to water appropriation, water right administration and groundwater management activities under both the Water Appropriation Act and the Groundwater Management District Act. It has been developed in response to concerns over the provisions of HB2245 as an acceptable alternative to address the underlying concerns over two separate and distinct administrative and judicial avenues for seeking water right protections that may have been critical before 1980, when all state water rights existed in Kansas under one administrative process prescribed in the Water Appropriation Act and one provision for groundwater management programs under the Groundwater Management Act.

Thank you for the consideration of SB 491. I will stand for questions at the appropriate time.