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**Testimony in Opposition to SB 491 to
The Senate Natural Resources Committee
By Susan Metzger, Assistant Secretary
Kansas Department of Agriculture
March 11, 2016**

Good morning, Chairman Powell and members of the committee. I am Susan Metzger, Assistant Secretary for the Kansas Department of Agriculture (KDA), and I appreciate the opportunity to provide testimony in opposition to SB 491.

Coordinating State Rules with Local Management Plans of the Groundwater Management Districts (GMDs)

- SB 491 seeks to require the chief engineer or secretary of agriculture to notify a groundwater management district (GMD) if a proposed rule or regulation may change an adopted management program and provide a copy of any proposed changes to the management plan that may be appropriate to accommodate the proposed rule or regulation for consideration by the GMD board.
- Under the GMD Act, as currently written, GMDs have the power to “recommend to the chief engineer rules and regulations which relate to the conservation and management within the district.” There is no requirement for GMDs to revise management programs before they or the chief engineer can adopt or amend rules related to groundwater management or any requirement of the chief engineer to submit proposed statewide groundwater rules to the GMDs for their approval prior to adoption.
- Each of the GMDs has a body of regulations that have been recommended by the GMDs to be adopted by the chief engineer pursuant to K.S.A. 82a-1028(o) unique to their individual GMD. There is also a large body of statewide groundwater regulations that have been adopted by the chief engineer pursuant to the Kansas Water Appropriation Act.
- The GMD Act further states that “Nothing in this act shall be construed as limiting or affecting any duty or power of the chief engineer granted pursuant to the Kansas water appropriations act.” **While KDA is very willing to coordinate with the GMDs on their management programs and develop local regulations that will assist in the implementation of their programs, the requirements as described in SB491 may actually “limit or affect the duties or powers of the chief engineer.”**
- While it has been our practice to work with the GMDs in drafting statewide regulations, there has been no historic practice to have each of the GMDs approve such statewide regulations prior to adoption and/or amend their management programs. **Such practice could significantly slow the progress of important statewide policy adoption.**

- KDA has extensively sought feedback from the GMDs on several potential statewide regulations, including penalties for overpumping, demonstration for moving points of diversion and meter sealing. We appreciate the input and feedback and have adapted the proposed regulations based on the feedback received. **We will continue with this open and transparent process of regulation development.**

Public Notice for State Water Right Proceedings

- KDA is committed to administering the Kansas Water Appropriation Act and the associated rules and regulations fairly, consistently and transparently. We are open to discussing ways to enhance this transparency and to seek additional feedback, where appropriate.
- KDA is committed to protecting water rights, which are individual private property rights. We currently send notices to any person with a water right, including domestic rights within one half mile of any proposed well or surface water pumpsite. One half mile is based on a reasonable hydrologic distance.
- **We are concerned that blanket requirements for public notice to “any person who has an interest” add unnecessary process, may unnecessarily slow the water right application process, and may invite comment and disputes that are not germane to the hydrologic review of an application.**

Chief Engineer Position Classification

- SB 491 seeks to strike K.S.A. 74-506d allowing the opportunity for any vacant positions of the chief engineer, his/her assistants and employees with the classified service to be converted by an appointing authority to an unclassified position.
- The current chief engineer has elected to retain the classified position status. Some staff under the direction of the chief engineer have elected to convert to an unclassified position. Individuals selected to serve in the capacity of chief engineer in the future will be afforded the opportunity to choose whether they wish to serve as a classified or unclassified employee. **Changes to the statute would limit the options available to future employees.**

Common Law Claimant

- Section 7 of the proposed legislation would amend 82a-716 and 82a-717a to remove the term “common law claimants.” **Retaining the language related to common law claimants is important as it describes the federal reserve rights in Kansas.** As an example, under the Winters doctrine, the Kickapoo Tribe holds a federal reserve water right with a priority date of October 24, 1832. Their right, as with all water rights in Kansas, are and should remain protected from the threat of impairment.

Impairment

- SB 491 seeks to address the issue as to whether the state’s statutory process for investigating and addressing impairments provides an appropriate means for protecting water rights. KDA is interested in identifying alternatives to best address this issue without reducing the ability of an individual to protect his or her water right.
- For this reason, KDA is leading an interagency and inter-organizational discussion on water right impairment. This working group includes representation from the GMDs, the Kansas Water Authority,

Kansas Farm Bureau, Kansas Livestock Association, Kansas Grain and Feed Association, Kansas Corn and others. This working group is collaboratively drafting potential alternatives to the process a water right owner must follow for seeking relief for an impairment complaint. Many of the working group members submitted testimony in opposition or as a neutral statement to HB 2245, which also seeks to revise the process by which a senior water right holder seeks relief from impairment, noting that this working group may propose a more preferred alternative.

- The impairment working group has not specifically weighed in on the language in SB 491. However, they have discussed language that would allow the court to consider evidence not available to the chief engineer during his original investigation – this would bridge the gap between the current role of the court to solely review the chief engineer’s decision and a full *de novo* review. Following this concept that the working group is exploring, the GMD could provide new evidence or share evidence with the chief engineer for his investigation.
- Aspects of the revision to the impairment claim process captured in SB 491 may be an appropriate means to address the concerns of the working group. However, **KDA strongly believes that any statutory revisions are premature until the working group has completed its discussion and recommendations.**

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