



Southwest Kansas
Groundwater Management District No. 3
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Testimony in Opposition to HB 2459
Provided To The House Water Committee
From the Southwest Kansas Groundwater Management District No. 3 (GMD3)
February 1, 2024

Chairman Minnix, members of the House Water Committee, My name is Mark Rude, and I am Executive Director of the Southwest Kansas Groundwater Management District No. 3 (GMD3). I appreciate the opportunity to provide testimony and be a resource for you today. GMD3 stands opposed to HB 2459 as written as it would essentially prevent almost any future point of diversion changes within the boundaries of our district.

No more redrills. It is no secret that groundwater supply in much of Western Kansas is over appropriated. This occurred late last century during the development phase of the high plains aquifer with water rights, legally defined as real property rights, granted to individuals by the State of Kansas in accordance with existing state policy. HB 2459 as currently written would prevent an application to change the point of diversion of an existing water right if it were to exceed the “safe yield” of the source of the water supply. This may include established domestic appropriation rights. While there is great variability in the groundwater supply in Kansas, in an over appropriated area this would disallow virtually all applications regardless of the underlying reason for the change application. There is no exception for the type of water right or rationale for the change being sought. It appears that a city water supply well whose casing fails, necessitating a re-drill would be unable to do so under this new language. This hypothetical, which is often a reality, could be repeated across any number of feedlots, dairies, or irrigation wells in Western Kansas.

Denied maintenance of real property. K.S.A. 82a-708b provides for a process by which water rights can apply for changes, while retaining their existing priority under the law. If a senior, or even vested right, which is likely to be of a much older construction were to need to be moved and redrilled, a virtual impossibility under this strict safe yield standard, then what are we to make of the underlying real property right granted by the State and developed with investment backed expectations? Does it still exist if there is no ability to use, or reestablish use of that

right? And if the new state law prevents that establishment, is there consideration for compensation for the economic value of that right?

Temporary permits instead of property rights. HB 2459 appears to take a great deal of discretion away from the Chief Engineer in determining which moves are, and aren't, appropriate and necessary. If these changes are eliminated, are we artificially developing a system that leans towards the issuance of significant temporary permitting as allowed under K.S.A. 82a-708c? Temporary permits, while a short-term fix, do not reflect the priority of the underlying water rights and are not intended to be a long-term solution. Administration of water based on Temporary permits lends more possibility to administrative favoritism in who gets access to water.

The board and staff of GMD3 appreciates the opportunity to provide input, and while we oppose this type of blanket policy, we stand ready to meet with agency staff and the Legislature as this discussion continues to evolve.