

**From:** Jarvis Garetson  
**To:** [John Willey](#)  
**Subject:** Fw: HB 2099 Testimony  
**Date:** Wednesday, February 15, 2017 9:39:16 AM

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Chairman Hoffman and Committee,

Thank you for the opportunity to testify today. I am Jarvis Garetson, a partner in Garetson Brothers Partnership. I farm primarily in Haskell County with my brother Jay and our parents, Jesse and Jerra. Our family has been farming in Haskell County since 1902 when my great-grandfather homesteaded there. His first domestic well dug in 1903 or 1904 was to a depth of around 90 feet, into what we now know as the Ogallala Aquifer. The static water table was around 60 feet at that time. My wife and I live on this homestead and re-drilled the domestic well 2 years ago to a depth of around 520 feet, static water table around 320 feet. This was the fourth re-drill of the domestic well that I know of if not the fifth.

We, Garetson Brothers, received on February 1, 2017, a court ruling in our favor, upholding Kansas Water Law. This court case was the first time that a water impairment case had been tried since Kansas Water Law was passed. Was it fast, no, it took nearly 4 years. Was it cheap, not by a long way. Why did we choose the courts instead of the administrative action? Well, we filed an administrative claim in 2005 to defend our Vested Right HS 003 and in 2007 we withdrew the claim for a variety of reasons. As you can see the Division of Water Resources looked at and studied the claim for two years. Fast forward to 2011 with no action by DWR, GMD 3, or the State of Kansas, other than admire the problem for several more years, for the good of the whole. We came to a point that we had to start the process to defend our Vested Right again. This time we had experience with the Administrative route and our experience told us that DWR and the Chief Engineer were going to study, observe, and admire the problem again. So we elected to go the route of the courts.

DWR was appointed by the court as Fact Finder/Referee in the case. In our opinion they, DWR, were and are the ones with the most knowledge, understanding, and expertise in this area.

We are opposed to the portion of HB 2099 that limits a vested, or senior right owner from going to the courts until after the administrative route is exhausted. What the proposed language does in effect is limit the options that the vested, or senior right owner has to defend their vested, or senior right from impairment. There is now case law for the courts to use if this route is chosen by the vested, or senior right owner. The vested, or senior right owner gets to choose which route to use, not the junior right owner when it comes to impairment. By making the vested, or senior right owner **EXHAUST** the administrative route first, you are in effect defending the junior right from the judicial route.

I will agree that the proposed bill does not eliminate the judicial route but it does limit the options the vested, or senior right owner has from two options down to one. I also agree with the proposed language that the Chief Engineer will respond and start an investigation within two weeks and have a finding and ruling within twelve months. In fact I believe that had this language, giving the Chief Engineer a timeline, been on the books in 2011 we, Garetson Brothers, would not have chosen the judicial route because there would have been a reasonable deadline for an answer.

In short, we oppose exhausting the administrative route before being able to seek judicial relief. We support the language placing timelines on the Chief Engineer to inform the parties involved, start an investigation, and a deadline for a ruling and a plan of action.

I am, we are available for questions at any time.

Sincerely,  
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