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To: Senate Committee on Natural Resources  
Sen. Larry Powell, Chair

From: Aaron M. Popelka, V.P. of Legal & Governmental Affairs, Kansas Livestock Association

Re: **HB 2059 AN ACT concerning water; related to the diversion of water; chief engineer.**

Date: March 12, 2015

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

Thank you, Chairman Powell and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA appears to today as a proponent of HB 2059.

In recent months, KLA was made aware by its members and the Kansas Department of Agriculture, Division of Water Resources (DWR) that the Chief Engineer was getting close to issuing an order in an impairment proceeding initiated by the U.S. Fish and Wildlife Service (FWS) for its senior water right at Quivira National Wildlife Refuge. This water right is located in the Rattlesnake Creek Basin, which is part of Ground Water Management District (GMD) 5. Although it is still possible the Chief Engineer could find that FWS' water right is not impaired, KLA members in the area are increasingly concerned with the potential ramifications in the region if the right is found to have been impaired. FWS' water right is one of the most senior water rights in the region, and an impairment could halt irrigation and stock water use across the basin at a time when the water is needed most.

GMD 5, Water Protection Association of Central Kansas (Water PACK), KLA members, and others in the Rattlesnake Basin began to discuss alternatives to avoid drastic economic losses in the region if an impairment were to be found. One potential solution is to augment stream flow using groundwater rights that have already been acquired by GMD 5. This solution would allow FWS to receive at least part of the water under its right, while preserving the first-in-time, first-in-right system of prior appropriation.

Uncertainty exists, however, as to whether the Chief Engineer has the authority under K.S.A. 82-706b to remedy an impairment through augmentation. As a result, DWR decided to introduce this legislation to specifically articulate that authority in statute. KLA supports this move, as it will help insulate DWR from a legal challenge by FWS if it objects to the stream augmentation solution.

The Committee may recall, it passed a similar version of this bill, SB 52, on February 5, 2015, which also subsequently passed the Senate 40 - 0 on February 20, 2015. SB 52, however, is different in three ways from HB 2059. KLA asks that if the Committee decides to work HB 2059 that it make amendments to conform HB 2059 with the version of SB 52 that passed the Senate. This requires three amendments:

- 1.) On page 1, line 22, insert: "within the rattlesnake creek subbasin located in hydrologic unit code 11030009,".
- 2.) On page 1, line 23, before the period, insert: "such replacement is available and offered voluntarily".
- 3.) On page 2, strike all of lines 2 through 5.

KLA requests the above amendments to HB 2059 because as KLA testified at the committee hearing on HB 2059, KLA supports language that would limit the Chief Engineer's authority to use augmentation to the Rattlesnake Creek Basin. This amendment is appropriate because augmentation is a new concept and may not be appropriate in basins with different hydrology.

Second, KLA supports language in SB 52 that limits the Chief Engineer's augmentation authority to only sources of water that are available and offered to the Chief Engineer voluntarily. This is important because it prevents the Chief Engineer from drilling new wells in a fully appropriated basin or from seizing, through eminent domain, currently permitted junior water rights to satisfy an impaired senior right.

Finally, the Committee should delete the language on page 2 added by the House Committee on Agriculture and Natural Resources by amendment because the language is, in part, unnecessary, and in part, does not conform with how impairment proceedings are carried forth.

Thank you for the opportunity to submit testimony. KLA asks that the Committee favorably pass HB 2059 with an amendment to conform the bill with SB 52 as it passed the Senate.