

**Testimony on Senate Bill 510**  
**to**  
**The Senate Natural Resources Committee**

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Good morning, Chairman McGinn and members of the committee. I am Burke Griggs, staff attorney with the Kansas Department of Agriculture. I am here in support of Senate Bill 510, which secures property rights in the conservation of water.

The bill has four elements. First, it defines “conservation use” as “the maintenance of a water right for future use.” Second, it recognizes conservation as a distinct beneficial use of water, statewide, like all other recognized beneficial uses. Third, it prohibits the diversion of water under a conservation use right. Finally, the bill guarantees that the owner of a water right can change to and from conservation use with his property rights intact. By establishing conservation use as a beneficial use, the bill provides property rights protections previously unavailable under Kansas law, while conserving water at the same time.

A Kansas water right is a right to use water. If a water right owner does not use water for five successive years, he risks losing his water right to abandonment. This is known as the “use it or lose it” rule. DWR regulations contain numerous exceptions that can temporarily forestall the threat of abandonment, but these regulations can be cancelled or modified. The recently cancelled WRCP provided one such exception, but it had several problems.

SB 510 is a better approach. By establishing conservation use as a beneficial use of water, the water rights owner who holds a conservation use right is using that water—by maintaining the water right for future use, the same way a businessman uses money by keeping it in cash reserve. Because he is legally using the water in this way, and cannot divert water, the water rights owner protects his property right from abandonment and conserves water at the same time. For years, stakeholders across Kansas have wrestled with the “use it or lose it” rule: how can a water right owner conserve water for the future without putting his property rights at risk? WRCP and SB 316 just put this problem off, by creating a temporary exception. By contrast, SB 510 resolves the problem, by recognizing conservation as a beneficial use—a permanent, real property right, in keeping with the rest of the Kansas Water Appropriation Act.

In 1945, the legislature passed the Kansas Water Appropriation Act, which formally established water rights as real property rights. Later amendments of the Act have regularly responded to Kansas’ evolving water needs. SB 510 continues this tradition of providing voluntary, property-rights based conservation programs within the framework of the Act. Adding a new beneficial use, as this bill does, is in keeping with the evolution of Kansas water law that has taken place since 1945. And from a procedural standpoint, SB 510 does not change the core statutes by

which water rights are obtained, changed, and declared abandoned. In sum, this is not a drastic philosophical change at all. SB 510 reaffirms a water right's owner's discretion to use the quantity of water authorized by his water right, as long as that use is legal and reasonable.

Because SB 510 enhances the property rights of a water rights owner, it provides a number of previously unavailable benefits to that owner. First, by changing his use to conservation use, he need not maintain a pump, pump water simply to prevent abandonment, or engage in other economically inefficient activities that also waste water. Second, the bill increases the marketability of water rights, by allowing a water right owner to sell or lease a water right that might otherwise be lost to abandonment. Currently, there are over 17,500 owners of vested and certified water rights in Kansas—irrigators, industries, municipalities, and other users. Any discussion of economic benefit begins with those water rights owners. Third, owners of conservation use rights can leverage those rights to obtain federal conservation benefits, just as with WRCP, but in a more flexible way. And finally, conservation use water rights stand to benefit other water rights owners, by reducing groundwater drawdown and improving streamflows—and thus reducing their pumping costs.

Conservation use should operate statewide—just like all other beneficial uses of water under Kansas law. The need for water conservation is not limited to closed areas, dry areas, or overdeveloped areas. Even in eastern Kansas, much of the surface water use is conditioned upon available streamflows not allocated to senior uses. Moreover, reservoir capacity is decreasing due to sediment accumulation, while water demands continue to increase. Drought is never limited to closed areas. Because Kansas is such a varied state geologically and hydrologically, DWR anticipates putting forth regulations that address these variations—as it currently does for other beneficial uses of water.

Some stakeholder groups have expressed concerns that SB 510 will promote hoarding. These concerns are overstated. First, only vested and certified rights can be converted to conservation use: as a result, there are significant restrictions on what can be “tied up”. Water rights for other uses such as irrigation can still be obtained by appropriation, where water is available. Second, the same change procedures will govern changes from conservation use rights to subsequent uses, and these procedures give the Chief Engineer substantial discretion in evaluating the reasonableness of a change application, depending on the location of the water supply, the proposed use, and other factors. Third, SB 510 does not change existing limitations on the reasonable use needs of municipal users. Finally, keep private property rights in mind. If a water right owner has made the decision that placing his right into conservation use is in his interest, then he should be allowed to do so, and the state should not impede the exercise of his private property rights.

SB 510 builds on a central tradition in Kansas water law: protecting property rights in water, while adapting to changing economic, technological, and hydrological realities. By allowing a water right owner to voluntarily change his right to conservation use, and by giving that conservation use right the full protection of the law, SB 510 enhances the private property rights of the owner, while promoting water conservation at the same time.

I will stand for questions at the appropriate time.