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MEMORANDUM

To: House Committee on Agriculture
From: Kyle Hamilton, Assistant Revisor of Statutes
Date: March 14, 2017
Subject: Bill Brief on SB 48

SB 48 would change the remedies for senior water right holders who have had their water right impaired by an unlawful diversion of water.

Section 1 would require a senior water right holder to exhaust the administrative remedies in Section 2 before seeking a court-ordered injunction to stop someone from engaging in the activity that is impairing their water right.

Section 2, subsection (b)(2), would allow a senior water right holder whose right is being impaired to submit a complaint to the chief engineer. Within two weeks of receiving the complaint, the chief engineer would be required to initiate an investigation of the complaint, provide notice of the investigation to the complainant and allegedly impairing party, and provide an opportunity for the parties to submit any relevant information. Following the investigation, the chief engineer could issue an order to limit, curtail or prevent the unlawful diversion of water. The chief engineer would be required to complete the investigation within 12 months of the date the complaint was submitted, but would be able to extend the investigation for good cause by notifying the parties, in writing, of the amount of time still needed.

Section 2, subsection (b)(3) would be amended to allow a complainant to petition the chief engineer for a temporary order to limit, curtail or prevent the unlawful diversion of water. The temporary order would be effective until a final order is issued. A temporary order would only be issued if the chief engineer finds that (1) a substantial likelihood exists that impairment is

occurring or will occur and (2) an order limiting, curtailing or preventing the unlawful diversion would not be adverse to the public interest.

Section 2, subsection (b)(3) would make the chief engineer's order to be subject to review under the Kansas judicial review act.

SB 48 would become effective upon publication in the statute book.