

Approved Thomas F. Walker
Date 3-31-87

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Thomas F. Walker at
Chairperson

9:00 a.m./p.m. on March 30, 1987 in room 522-S of the Capitol.

All members were present except:

Representative Peterson

Committee staff present:

Avis Swartzman - Revisor

Mary Galligan - Revisor

Jackie Breymeyer - Secretary

Conferees appearing before the committee:

David Pope - Chief Engineer-Director, Division of Water Resources, KS. St. Bd. of Agriculture

Darrell Plummer - Department of Health and Environment

Bill Fuller - Kansas Farm Bureau

Tom Stiles - Kansas Water Office

Committee

The meeting of the House Governmental Organization was called to order by Representative Thomas F. Walker, Chairman. The minutes will stand approved if there are no corrections or additions.

HB 2569 - Concerning Water Rights

David Pope was first on the agenda to speak to the bill. He stated the intent of HB 2569 is to provide strong incentive for domestic water wells to be properly constructed so the potential to cause water pollution is reduced. He commented a domestic well constructed by a licensed contractor should be properly completed anyway, but as far as a well that is constructed by the owner goes, it would be more difficult to enforce in accordance with the provisions of the Kansas Groundwater Exploration and Protection Act. The private owner would be the largest violator since he would not be aware of water rights and laws. (See Attachment 1) Mr. Pope is not certain HB 2569 will accomplish domestic water wells being constructed properly.

Darrell Plummer testified he has concerns with this bill. Many people who construct domestic wells are not aware there are laws on the books. They do not understand water rights. Of course, this does not apply just to domestic, but to all water wells.

Bill Fuller, Kansas Farm Bureau distributed copies of his testimony to the committee. (See Attachment 2) Statements to the effect that water rights are considered property rights and the loss of water rights will decrease the value of farm land because these rights are directly related to land productivity, were contained in the testimony. Attached amendments were submitted for the committee's consideration.

Tom Stiles was the final conferee to address the bill. His testimony included support of the concepts presented in the bill. The Water Office also supports the amendments the Farm Bureau offered. He stated the amendments clarify the policy and intent of minimum streamflows. (See Attachment 3)

The Chairman stated that the hearing was closed on HB 2569. The Committee turned its attention to HB 2570.

David Pope presented testimony on the bill. (See Attachment 4) He said in addition to technical complexities, the bill raises policy and legal questions of the state becoming involved in the settling of these water disputes. Court costs could be more expensive than the cost of drilling new wells. He recommended the matter be studied further.

The hearing on HB 2570 was closed. The Chairman directed the committee's attention to SB 88.

Representative Hassler moved that SB 88 be reported favorably for passage. Representative Sughrue gave a second to the motion. The motion carried.

The agenda for Tuesday will include a library and nursing report and possible final action on HB 2569, HB 2570 and SB 197, and K-BITS. The meeting was adjourned.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

STATEMENT BY DAVID L. POPE
CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE

TO THE

HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE
ON HOUSE BILL No. 2569
March 30, 1987

Chairman Walker and Members of the Committee, thank you for the opportunity to testify on House Bill No. 2569. House Bill No. 2569 would amend the Water Appropriation Act in Section 82a-705a by requiring that,

No person shall acquire a domestic water right after July 1, 1987, by the use of water from a well constructed in violation of the provisions of the Kansas groundwater exploration and protection act.

The Water Appropriation Act in K.S.A. 82a-701 (c) defines "domestic use" as,

the use of water by any person or by a family unit or household for household purposes, or for the watering of livestock, poultry, farm and domestic animals used in operating a farm, and for the irrigation of lands not exceeding a total of two (2) acres in area for the growing of gardens, orchards and lawns.

K.S.A. 82a-705 provides that,

No person shall have the power or authority to acquire an appropriation right to the use of water for other than domestic use without first obtaining the approval of the chief engineer,...(emphasis supplied)

K.S.A. 82a-705a provides that,

The use of water for domestic purposes instituted subsequently to June 28, 1945, to the extent that it is beneficial, shall constitute an appropriation right...

Domestic uses are exempt from the permit requirements of the Water Appropriation Act. A domestic user can acquire an appropriation right by the actual use of water.

All water wells constructed in Kansas, including domestic wells, are required to be constructed in accordance with the provisions of the Kansas Groundwater Exploration and Protection Act which is administered by the Kansas Department of Health and Environment (KDHE). This Act, along with rules and regulations promulgated by the Secretary of KDHE, sets standards for the construction of such wells primarily in order to protect the quality of the groundwater.

As I understand House Bill No. 2569, it would deny a person the protection that they might otherwise obtain by having a domestic water right (i.e. protection against impairment from the holders of junior water rights) if his or her well was not constructed in compliance with the Kansas Groundwater Exploration and Protection Act. In other words, the intent of House Bill No. 2569 is to provide a strong incentive for domestic water wells to be properly constructed so that their potential to cause pollution of groundwater is reduced.

While I think this concept has considerable merit, it does raise a number of related issues. From a legal standpoint, a domestic water well completed by a licensed water well contractor should be properly completed anyway. If it is not, the domestic well owner would be penalized for improper work of the contractor.

In the case of a domestic water well constructed by the owner himself, the chances of the water well being constructed strictly in accordance with the provisions of the Kansas Groundwater Exploration and Protection Act are not as great and enforcement is more difficult.

The largest group of people who might drill domestic wells in violation of KDHE regulations would probably be the private homeowner. This group is

probably no more aware of water rights laws than they are of the KDHE well construction regulations.

While I believe the concept of providing a strong incentive for domestic wells to be constructed properly so that potential pollution to groundwater is reduced, I am not certain that House Bill No. 2569, as written will accomplish this purpose.

As an alternative to passing the bill this year, our office would be happy to study this matter in conjunction with representatives of KDHE, and perhaps the Water Well Advisory Committee, in an effort to devise a technique to present back to this Committee next year that would provide an effective and enforceable law which will promote the proper construction of domestic water wells in order to protect our groundwater to the maximum extent possible.

Thank you for the opportunity to appear Mr. Chairman. I would be happy to answer any questions at this time.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

**RE: Proposing amendments to H.B. 2569 concerning
domestic water rights**

March 30, 1987
Topeka, Kansas

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

My name is Bill Fuller. I am the Assistant Director of Public Affairs for Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of the 105 county Farm Bureaus. We appreciate this opportunity to offer "friendly" amendments to H.B. 2569.

Many farmers and ranchers have been concerned with the concept of minimum streamflows since the designations were begun in 1984. S.B. 41 being considered this session adds nine Kansas streams and rivers to the list. Many of our members are concerned about how government is going to make water flow where little or no water exists today.

Farm Bureau members are concerned and fearful that somewhere in this process of designating more minimum streamflows, the bureaucracy may discourage the use of conservation practices in order to make water flow.

Another reason Kansas farmers fear expanding minimum desirable streamflow designations concerns the possibility of losing water rights. Water rights are considered property rights.

The loss of water rights will decrease the value of a farmer's land because such rights are directly related to land productivity.

The Kansas Water Office has assured us the encouragement of soil and water conservation practices is a high priority in water policy and water rights issued before April 12, 1984 **cannot** be shut off by minimum desirable streamflows. Therefore, after conferring with the Water Office and several legislators on the House Energy and Natural Resources Committee, it was suggested these policy positions should be clarified in the statutes ... and H.B. 2569 is a vehicle.

Therefore, we respectfully ask the attached amendments be approved for H.B. 2569. We know of no opposition to this proposal. Thank you for your consideration. I will attempt to respond to any questions you may have.

HOUSE BILL No. 2569

By Committee on Federal and State Affairs

3-17

0017 AN ACT concerning domestic water rights; imposing a certain
0018 limitation on the acquisition thereof; amending K.S.A. 82a-
0019 705a and repealing the existing section.

82a-703b and 82a-705a and K.S.A. 1986 Supp.
82a-928

0020 *Be it enacted by the Legislature of the State of Kansas:*

sections

0021 Section 1. K.S.A. 82a-705a is hereby amended to read as
0022 follows: 82a-705a. (a) The use of water for domestic purposes
0023 instituted ~~subsequently to~~ after June 28, 1945, to the extent that
0024 it is beneficial, shall constitute an appropriation right.

0025 (b) *No person shall acquire a domestic water right after July*
0026 *1, 1987, by the use of water from a well constructed in violation*
0027 *of the provisions of the Kansas groundwater exploration and*
0028 *protection act.*

0029 (c) The chief engineer, ~~however,~~ may require any person
0030 using water for any purpose to furnish information with regard to
0031 such use thereof.

Sec. 2. K.S.A. 82a-703b is hereby amended to read as follows:

82a-703b. Minimum streamflows; condition of appropriation right. In addition to any other limitation or condition prescribed by law or rule and regulation of the chief engineer, it shall be an express condition of each and every appropriation right applied for after ~~the effective date of this act~~ that such right shall be subject to any minimum desirable streamflow requirements identified and established pursuant to law on or before July 1, 1990, for the source of water supply to which such right applies.

(a)

, except for use of water for domestic purposes,

April 12, 1984,

(b) All vested rights, water appropriation rights and approved permits having a priority date on or before April 12, 1984, shall not be subject to any minimum desirable streamflow requirements established pursuant to law.

-Sec. 3. K.S.A. 1986 Supp. 82a-928 is hereby amended to read as follows:

reservoirs and through the acquisition from the federal government of storage in federal reservoirs and by agreements with the federal government regarding the use of storage;

(g) the inclusion in publicly financed structures for the conservation, management and development of the water resources of the state of reasonable amounts of storage capacity for the regulation of the low flows of the watercourses of the state;

(h) the achievement of the primary drinking water standards promulgated by the secretary of health and environment pursuant to K.S.A. 65-171m, and amendments thereto;

(i) the identification of minimum desirable streamflows to preserve, maintain or enhance in-stream water uses relative to water quality, fish, wildlife, aquatic life, recreation and general aesthetics;

(j) the maintenance of the surface waters of the state within the water quality standards adopted by the secretary of health and environment as provided by K.S.A. 65-164 to 65-171t, inclusive, and amendments thereto;

(k) the protection of the quality of the groundwaters of the state as provided by the Kansas groundwater exploration and protection act and other acts relating thereto;

(l) the management of the groundwaters of the state as provided by the Kansas water appropriation act and the provisions of K.S.A. 82a-1020 to 82a-1040, inclusive, and amendments thereto;

(m) the provision of financial and technical assistance to public corporations concerned with management, conservation and development of water resources;

(n) the review and coordination of financial assistance for research that may be provided by federal or state agencies to public corporations concerned with management, conservation and development of water resources to prevent duplication of effort;

(o) the development of groundwater recharge projects;

(p) the encouragement of local initiative in the planning, implementation, funding and operation of local water programs to the extent that the same are supportive of state water programs; ~~and~~

(q) the design of municipal water systems to provide an adequate water supply to meet the needs during a drought having a 2% chance of occurrence;

~~82a-928. State water plan, policies to achieve long range goals listed:~~ The policies of the state of Kansas that are deemed desirable for the achievement of the long-range goals and objectives as set forth in K.S.A. 82a-927, and amendments thereto, and that shall serve as guidelines for public corporations and all agencies of the state, relative to their responsibilities with respect to the water resources of the state whenever physical and economic conditions permit, are hereby declared to be:

(a) The utilization of nonstructural methods, including floodplain regulation, and structural measures for the reduction of flood damage;

(b) the design of proposed levees and dikes so as to reduce flood risks in agricultural areas to a chance of occurrence in any one year of 10% or less;

(c) the design of proposed levees and dikes so as to reduce flood risks in urban areas to a chance of occurrence in any one year of 1% or less;

(d) the design of proposed storage structures for the protection of agricultural areas so as to provide sufficient capacity to control the volume of a flood having a chance of occurrence in any one year of 4% or less;

(e) the design of proposed storage structures for the protection of urban areas to provide sufficient capacity to control the volume of a flood having a chance of occurrence in any one year of 2% or less;

(f) the development of adequate water storage to meet, as nearly as practicable, present and anticipated water uses through planning and construction of multipurpose

baseflows for

;

and domestic uses and for the protection of existing water rights

; and

(r) the encouragement of the use of soil and water conservation practices and structures to control erosion and to effectively utilize precipitation and runoff.

agricultural

Sec. 4. K.S.A. 82a-703b and 82a-705a and K.S.A. 1986 Supp. 82a-928 are hereby repealed.

0032 ~~Sec. 2. K.S.A. 82a-705a is hereby repealed.~~

0033 Sec. 3. This act shall take effect and be in force from and
0034 after its publication in the statute book.

5.

Testimony to the
House Committee on Governmental Organization
by the
Kansas Water Office
March 30, 1987

Re: H.B. 2569

Mr. Chairman and Members of the Committee:

The Kansas Water Office supports the concepts presented in House Bill 2569 concerning domestic rights. Although the language of Section 1 will have no direct effect on our agency, we feel it is good policy that protects the state's groundwater resources.

We also support the amendments presented by the Kansas Farm Bureau referring to minimum desirable streamflows. For three years, we have debated the intent and impact of minimum desirable streamflows. Three issues consistently arose:

- 1) The administration of senior water rights for minimum streamflows.
- 2) The administration of domestic rights for minimum streamflows.
- 3) The curtailment of conservation practices by minimum streamflows.

The amendments presented to you clarify the policies and intent of minimum streamflows on these three issues. The Kansas Water Office has worked with the Kansas Farm Bureau on these issues and are satisfied with the amendments. We support their inclusion in this bill.

Attachment 3
G. O. Comm.
3/30/87

STATEMENT BY DAVID L. POPE
CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE

TO THE

HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE
ON HOUSE BILL No. 2570
March 30, 1987

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify on House Bill No. 2570.

As I understand the intent of House Bill No. 2570, it would provide a mechanism to allow the holder of water right to file a petition with the Chief Engineer alleging that the unreasonable overall lowering of the static water level at the water right holder's point of diversion resulted in economic damage to the party. The bill would require the Chief Engineer to make an investigation to determine whether or not the overall lowering of the static water level has been unreasonable. If he determines that the water table has not been unreasonably lowered, he shall submit the results of his findings to the holder of the water right. If the petition was not filed with a reasonable basis of fact and not in good faith, the holder of the water right would be assessed the cost of the investigation.

An additional incentive to require good faith petitions would be to require a \$100 investigation fee to be filed along with the initial petition.

If, based on the investigation, the Chief Engineer determines that the lowering of the static water level has been unreasonable and the holder of the water right has been economically damaged, the Chief Engineer would conduct a hearing, prepare findings and determine the cause and amount of economic damage that has occurred. He would report these findings along with a recommendation for settlement of the matter between the water users with junior water rights

Attachment 4
G.O. Comm.
3/30/87

who have caused the problem and damaged the water right holder. The bill limits this determination of damage to the direct economic cost of replacing or improving the diversion works to allow the economically damaged holder of the water right to continue to reasonably exercise the water right, including the cost of redrilling the well or lowering the pump.

The bill requires that the Chief Engineer assess the cost of the investigation and the hearing against the water user or users determined to have caused the economic damage. After the decision of the Chief Engineer is submitted, the parties would have 30 days to voluntarily settle the matter and notify the Chief Engineer. Otherwise the Chief Engineer would direct that the matter be settled in accordance with his or her recommendations. Any action taken by the Chief Engineer would be subject to review and enforcement in accordance with the act for judicial review and civil enforcement of agency actions. The court trial would be held de novo and the court could allow any party or the Chief Engineer to submit additional evidence.

House Bill No. 2570 would provide an administrative mechanism to resolve disputes between water users over the unreasonable lowering of the static water level when actual impairment has not occurred but direct economic damage has occurred.

We currently have a mechanism through the Kansas Water Appropriation Act to resolve direct impairment issues between holders of water rights. However, no current mechanism exists in situations where water is still available from a source of supply to satisfy the senior water right but the holder of that senior right is forced to pay the cost of drilling a deeper well, lowering a pump, or otherwise make some changes to their diversion works as a result of the unreasonable overall lowering of the water table in their area.

It should be noted that the determination as to the cause and effect of the pumping of a well or wells on the static water level at the location of another well in the aquifer is a complex matter. It is possible to make reasonable, accurate calculations based on established hydrological principles if one has adequate data on the parameters of the aquifer such as its thickness, permeability, storage coefficient and other related factors. In addition, it is necessary to have measurements of the water table, both past and present, along with data on the physical condition of the water wells involved. In some cases, an actual pump or aquifer test will be needed to obtain this information. Clearly, any administrative decision of the Chief Engineer needs to be made based upon good factual information and in many cases, obtaining it will be quite expensive.

In addition to the technical complexities, the bill raises significant policy and legal questions. Should the state become involved in settling these kinds of disputes? Should these provisions be limited only to damage caused to domestic wells, or to all types of water uses as now drafted? Could this bill be used by persons against irrigation, municipal or industrial water supply developments as a means of fighting an issue they were against for other reasons.

Under the present law, a significant burden exists to a party that may be economically damaged in order to seek compensation through the courts. In many cases, the court costs would be more expensive than the costs of drilling a new well at their own expense. The bill would shift some of that burden to the other parties and, to some extent, the state. While some of the cost to the agency would ultimately be reimbursed by the parties, this program should be

funded up front because the reimbursement would not occur until after the settlement has occurred.

Due to the complexity of the legal, fiscal and policy issues this bill raises, it would be my recommendation that this matter should be studied further so that all of these issues can be thought through as carefully as possible. Our office would be happy to assist with this matter in any way deemed appropriate by the legislature.

Mr. Chairman, I would be happy to answer any questions at this time.