

Approved February 15, 1990  
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at  
Chairperson

8:06 a.m. on February 13, 1990 in room 423-S of the Capitol.

All members were present except: All members present.

Committee staff present:

Raney Gilliland, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Pat Mah, Legislative Research Department  
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

David L. Pope, Chief Engineer-Director, Division of Water Resources  
Kansas State Board of Agriculture

The Chairman opened the hearing on SB 569 and SB 570. SB 569 concerning waters; relating to requests for extension of time to complete diversion works or perfect the water right; concerning the reinstatement of water rights or permits to appropriate, and SB 570 concerning water; relating to fees charged for applications to change place of use.

David Pope, Kansas State Board of Agriculture presented written testimony supporting both bills (Attachment I). He responded to questions from committee members. The hearing on SB 569 and SB 570 was closed.

The Chairman asked for action on SB 569 and SB 570. A motion was made by Senator Hayden that SB 569 and SB 570 be passed. Senator Daniels seconded the motion. Motion carried.

A motion was made by Senator Hayden to adopt the minutes of the February 8, 1990 meeting. The motion was seconded by Senator Daniels. Motion carried.

The meeting adjourned at 8:44 a.m. The next meeting will be, on February 14, 1990, at 8:00 a.m.

1990 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

February 13, 1990

GUEST LIST

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<u>NAME</u>	<u>REPRESENTING</u>
Rich McKee	ALA
Wayland Anderson	DWR KSBA
David J. Eyer	DWR KSBA
Rebecca J. Liggett	DWR-KSBA
Howard W. Lee	KANSAS
Cathy Holdeman	City of Wichita
Joyce A. Wolf	Ks. Audubon Council
John R. ...	KSBA

STATEMENT OF DAVID L. POPE  
CHIEF ENGINEER-DIRECTOR  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
BEFORE THE  
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
ON  
SENATE BILL NOS. 569 AND 570

February 13, 1990

Mr. Chairman and members of the committee, thank you for the opportunity to provide testimony on Senate Bill Nos. 569 and 570 pertaining to fees associated with the administration of certain aspects of the Kansas Water Appropriation Act by the Division of Water Resources, Kansas State Board of Agriculture. I thank you for agreeing to introduce these two bills at my request. I am now here in support of the passage of these bills.

Before I address the provisions of each bill individually, I would like to indicate that Senate Bill Nos. 569 and 570 are companion bills that address three different aspects of a proposed fee structure that would modify the filing fees for applications to change (i.e. modify) an existing water right, establish new fees for an extension of time, and for the reinstatement of a water right or permit previously dismissed under certain circumstances. These are revenue bills that seek to recover a portion of the cost of processing these matters from the applicant and to allow our agency to receive the additional funding necessary to carry out these important functions. I recognize that fee bills may not always be popular. Our request to initiate new fees or increase existing fees is not predicated on a desire to see these fees increased, but rather on the need for additional resources to carry out program functions in a timely and responsible manner. I would now like to explain the provisions of these bills in more detail:

*Attachment I  
E+NR  
2/13/90*

Senate Bill No. 569

The approval of an application and the issuance of a permit to appropriate water, in accordance with the provisions of the Kansas Water Appropriation Act, authorizes the construction of diversion works and the application of water to the proposed beneficial use within the terms, conditions and limitations of the permit. In accordance with the provisions of K.S.A. 82a-713, the Chief Engineer limits the time in which to perfect an appropriation to a reasonable period within which the proposed diversion works can be completed and the water applied to the proposed beneficial use. An extension of time may be allowed for good cause shown by the applicant.

Currently, the Division handles between 750 and 800 such requests for extensions of time each year without a fee being assessed. Processing these requests consumes a significant amount of staff time. Senate Bill No. 569 would amend the provisions of K.S.A. 82a-714 by requiring a fee of \$50 to accompany a request for an extension of time to: (1) complete the diversion works, or (2) perfect the water right.

In certain very limited instances, the Division believes it to be in the best interest of all concerned to reinstate a permit that has previously been dismissed. The most common circumstance is when the applicant has actually completed the diversion works within the time allowed, but failed to notify the Chief Engineer as required by K.S.A. 82a-714. In spite of a reminder letter, sometimes the applicant overlooks the reminder or does not recognize the importance of the matter until his or her permit gets dismissed. The applicant will then usually request a reinstatement of the permit. Since many areas are now being closed to new appropriations, this may be the only way to use the newly

installed well or other diversion works. Currently, we allow such reinstatements, if requested within 60 days, if the diversion works were completed at the authorized location within the time allowed, and the application was dismissed due to the mere formality of not notifying our office. However, this does result in some additional work for the Division and no fee is authorized by statute. We are not proposing to reinstate applications, permits or water rights where the applicant or owner has not otherwise complied with the provisions of the law, our rules and regulations or the conditions of the permit or water right involved.

Senate Bill No. 569 would require a \$100 fee to accompany a request to reinstate a water right or permit to appropriate water which has been dismissed by the Chief Engineer. Such request would have to be filed within 60 days of dismissal.

Senate Bill No. 570

K.S.A. 82a-708(b) allows the owner of a water right to change the place of use, the point of diversion or the use made of the water (i.e. the type of use) by applying to the Chief Engineer and complying with the provisions of the statute. Currently the filing fee for such applications is \$50 irrespective of the type or types of change(s) and the complexity of the matter. For example, a simple replacement well to be drilled within a few feet of the original well does not normally require a lot of staff time, while an application to move a point of diversion a much further distance along a stream or within an aquifer system may involve complexities regarding the determination of the local source of supply and whether or not such a change would impair other water rights. Likewise, changes in the place of use or the type of use, especially, may require

more information and analysis requiring additional time to review. Senate Bill No. 570 would modify the current fee schedule to recognize the difference in the types of changes and base the fees more in proportion to the amount of effort required by our office.

We propose to maintain the filing fee for "short move" changes in point of diversion of 300 feet or less at the current \$50 level. Currently, most of these changes are approved by our field staff and are not particularly expensive to process. Applications to change a point of diversion more than 300 feet would be assessed a fee of \$100. An application to change the place of use would be assessed a fee of \$100 and an application to change the use made of the water would be \$150. Since combinations of two or more types of changes are often made, the bill would allow a lesser fee of \$150 for two types of changes made on the same application and would assess a fee of \$250 if all three types of changes are made on one application, recognizing the cost effectiveness of filing a single application for more than one type of change.

I believe the proposed fee schedule fairly represents the relative amount of effort required for these types of changes to existing water rights. However, it should be recognized that any given application can be more or less complex depending on a wide range of circumstances.

#### Use of Revenue

Since these are revenue bills, I would call your attention to the information provided in the fiscal note for each bill. The Division is currently unable to process all of the applications, and other related matters required to administer the Water Appropriation Act, in a timely and effective manner with our existing staff.

We have reached a point in the State of Kansas where many areas of the state are now fully appropriated or where the water supplies of the area are unable to satisfy all of the demands for the use of water, especially during periods of drought. As a result, it is necessary for the Division to provide a more detailed and thorough review of every application being filed so as to determine whether or not it should be approved, modified or rejected.

While the general trend in the number of applications received had been down for several years, they have sharply increased during the drought of 1988 and 1989, placing an ever increasing work load on our staff. In addition, the number and complexity of changes to existing water rights have never been greater. Many existing wells are now reaching an age where they must be replaced. As farm operations are modified, changes in place of use must be filed and approved. As cities and rural water districts provide for interconnections to allow the distribution of water to a variety of entities, the place of use authorized by the water rights involved must be modified to accommodate these new arrangements. This is necessary to protect the water rights of all of the entities involved and otherwise allow water resources to be administered properly.

In addition, we are starting to see more and more existing water rights purchased in areas closed to new appropriations of water. This effectively allows growing needs for water to be met from existing supplies without increasing the total amount of water authorized.

Another area of need relates to water conservation and use efficiency. As a result of the provisions of the State Water Plan and legislation passed in 1986, we have been requiring each applicant for a new permit for a change in the

place of use or type of use under an existing water right to submit a water conservation plan. This has resulted in considerable extra work load to the existing staff processing regular applications since no additional staff was allowed when that statute was passed.

While I realize that subsequent action would be required through the appropriation process to modify our budget, these revenues would provide the resources to fund an additional engineering position to help address the matters referred to above. This new position would allow regular staff to concentrate on the backlog of applications that need to be processed and provide for specialized expertise to coordinate the water conservation program with the various other entities involved such as the groundwater management districts, Soil Conservation Service, KSU Extension and other parties. Even this will not likely take care of our long term needs in this area, but will at least allow us to stay "afloat" another year or so.

Mr. Chairman and members of the committee, I would appreciate your support of Senate Bill Nos. 569 and 570 and would be happy to answer any questions you may have.