

Approved: 2-10-99
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Steve Morris at 10:00 a.m. on February 9, 1999 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
 Bruce Kinzie, Revisor of Statutes
 Nancy Kippes, Committee Secretary

Conferees appearing before the committee:

 David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture

Others attending: (See Attached)

Senator Corbin made a motion to approve the minutes of February 4, 1999 as submitted. Senator Umbarger seconded and the motion carried.

David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture, continued his overview briefing (Reference Attachment 1 of January 28, 1999). Mr. Pope began with the criteria and constraints on obtaining a water right. He distributed written material in response to requests for additional information from the committee (Attachment 1).

Mr. Pope will continue his overview next week.

The next meeting will be February 10, 1999.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-9-99

NAME	REPRESENTING
Thomas L. Hutzinger	Ks. Dept. of Agric., Div. of Water Res.
Cathy Tucker Vogel	KS Water Office
Daniel J. Eklund	" " "
Christina Coleman	KS Chapter of Sierra Club
Mary Jane Stattelman	KS Dept of Agriculture
Al LeDoux	KWO

ADMINISTRATION OF KANSAS WATER LAW

**Senate Agriculture Committee Response to Request
for Additional Information**

by

**David L. Pope
Chief Engineer-Director
Division of Water Resources
Kansas Department of Agriculture**

February 8, 1999

*Senate Agriculture
2-9-99
Attachment 1*

Senate Agriculture Committee Response to Request for Additional Information
February 8, 1999

Request No.1 (Huelskamp). A list of times that a waiver has been granted during the last 10 years and why.

Records of the number of waivers are not formally documented so the summary is from a review of the files from 1995 - present. Many updates of regulations were made in 1994, so summaries including information prior to 1995 would be distorted. Under K.A.R. 5-10-4 waivers or exemptions to regulations may be granted by the Chief Engineer.

During this period 3,005 new applications were processed. There were 105 waivers found or about 3.5%. Reasons are listed:

<u>Regulation</u>	<u>Description</u>	<u>No.</u>
5-4-4	waived spacing from non-domestic wells that were usually owned by the applicant	60
	waived spacing from domestic wells not permitted or impairment was not anticipated	8
5-3-10	waived safe yield, which was often for contamination remediation	23
	waived safe yield in GMD #2 for cooling water that returned to the aquifer, which is non-consumptive	4
5-3-15	waived written permission requirements to pump surface water during the low-flow season, July-September	8
5-3-5d	waived requirements for water level measurement tubes	2

During this period 2,652 change applications were processed. There were 23 waivers found or less than 1%. Reasons are listed:

<u>Regulation</u>	<u>Description</u>	<u>No.</u>
5-4-4	Spacing waived well moved closer to wells owned by applicant and one emergency water district well, an observation well was required to monitor possible impairment	2
5-5-9	planned change of use apparently would exceed the original consumptive use but the quantity was very small	1
5-5-11	waived limitation on increases in irrigated acreage proposed, quantity of water was reasonable, flow meters were required to monitor use, with changes in equipment design and or water management plan it was believed no increase in net consumptive use would occur	6

Request No.1 (Huelskamp). A list of times that a waiver has been granted during the last 10 years and why. Continued from previous page.

(Waivers granted during change application continued)

<u>Regulation</u>	<u>Description</u>	<u>No.</u>
5-5-11(e)	flow meter requirement waived, alternative measurement required – operating time and flow rate	1
5-21-3(a)	spacing waived, small quantity, well moved closer to applicants well (GMD 1)	1
5-21-3(d)	point of diversion move exceeded allowable distance, small quantity for a municipal hardship, well in area a substantial distance from other wells (GMD 1)	1
5-22-8(a)	point of diversion move exceeded allowable distance, this change also reduced the number of points of diversion increasing spacing (GMD 2)	1
5-23-3(a)	waived spacing requirement, moved well closer to applicants own well (GMD 3)	1
5-23-3(d)	point of diversion moves exceeded allowable distance a very small amount, one resulted in increased spacing from other wells and the the other was moved closer to applicants own well (GMD 3)	2
5-24-6(a)	waived spacing requirement, moved well closer to applicants own well and away from other wells (GMD 4)	1
5-25-2(b)	point of diversion moves exceeded allowable distance, moves either were near applicants own wells, moves increased spacing to other wells and often accompanying equipment changes decreased quantity diverted (GMD 5)	6

Meter waivers (K.A.R. 5-3-5e) granted since 1995 have been for two general reasons, blanket waivers after major changes in GMD meter regulations and for relatively small numbers of users where installation of a meter into a previously constructed diversion works would be extremely expensive. In these cases an alternative measuring device was required monitoring pump running time and pump capacity or a non standard meter installation that would provide accurate measurement. There were about 330 meter waivers in the years '95-'97 and about 20 from '98 to the present.

Senate Agriculture Committee Response to Request for Additional Information
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Request No. 2 (Morris). Details of the permitting and certificate backlog- a breakdown of how many, how old, and what part of the state and reasons for not being completed.

Applications for permits

The Division of Water Resources does not believe there is a backlog of applications at this time. However, about 900 applications are processed each year so there will always be a significant accumulation of applications in process. The average time to process an application in the past 12 months is about 80 days. A reasonable and sustainable long term processing time is about 90 days. The total number of pending applications in January 1999 was about 530 and for February 1999 was less than 500. Reasonable and sustainable long term accumulations of applications is between 500 and 550 given the fact that significant amounts of time are needed in some cases to resolve questions from others outside the Division. Processing of permits is a daily routine so the number of pending applications is continually changing. Accumulated applications described in different ways may be for different time frames and therefore totals may not always be readily comparable.

Annual numbers of accumulated applications by field office

<u>Field Office</u>	<u>January '95</u>	<u>January '96</u>	<u>January '97</u>	<u>January '98</u>	<u>January '99</u>
Topeka	111	78	66	56	48
Stafford	324	271	262	287	291
Stockton	87	69	100	95	82
Garden City	110	105	114	101	103
Chanute	40	28	19	15	10
Total	672	551	561	554	533

Annual numbers of accumulated applications within each stage of processing

<u>Process stage</u>	<u>January '95</u>	<u>January '96</u>	<u>January '97</u>	<u>January '98</u>	<u>January '99</u>
Waiting initial review		148	44	90	46
Initial review	116	102	58	43	42
Field office action	66	18	13	20	23
Waiting other admin. action	2	10	11	11	2
Review for water quality	17	17	11	11	11
Released from '90 GMD #5 moritorium	101	106	41	45	38
Released from '90 moritorium, NPE south central Kansas		NPE	NPE	NPE	2

Returned to headqtrs	NPE	NPE	2	0	10
Sent to appl. for data	14	35	56	55	24

Annual numbers of accumulated applications within each stage of processing (continued)

<u>Process stage</u>	<u>January '95</u>	<u>January '96</u>	<u>January '97</u>	<u>January '98</u>	<u>January '99</u>
Waiting PD location (60 day suspension)	NPE	NPE	12	18	18
Domestic/field off.*	15	54	59	67	71
Clarication by appl.	48	28	22	17	22
Review by GMD	13	22	45	36	38
Notice to neighbors	45	43	38	63	51
Review by field off.	26	11	18	24	8
Review by agencies**	11	12	47	58	54
Waiting other permits	NPE	NPE	NPE	1	6
Pending GMD appeal	NPE	NPE	2	1	10
Pending action on right	17	16	11	10	7
Waiting to locate PD	NPE	NPE	7	10	15
Pending Chief Engr. (approval)	23	30	16	11	9
Pending final action	NPE	NPE	NPE	2	3
Reinstated after susp.	2	2	3	2	1
Change in use	NPE	NPE	NPE	2	0
Waiting on another	NPE	NPE	3	3	2

NPE- Not previously evaluated; * - temporary domestic applications;

** - includes 41 industrial and hydraulic dredging applications

Approximately half of the new applications received are awaiting decisions or a response from others outside the Division of Water Resources (October 1, '98).

Applications pending in New Applications Unit	61
Applications being processed in New Applications Unit	65
Applications in field offices for further processing	128
Pending action on other related water rights	17
Pending final approval	30
Subtotal waiting or in process at Division of Water Resources	301
Waiting on owners or drillers response	74
Waiting on GMD, other agency, or adjoining owners response	212
Subtotal waiting on others outside DWR	286

There are some categories of applications that have accumulated awaiting procedural or policy decisions that should not be defined as backlog. Examples of these include about 50 sand and gravel applications that are waiting on the Task Force decisions; 15-20 applications for diversion solely for

rural and suburban fire protection where the Division is working with the State Fire Marshal on a permitting process; numerous permits related to drainage district wells and other wells that pump large quantities of water from behind levies and dewatering operations for large structures to prevent flooding of basement floors where the application fees under the present statutes would be unreasonable.

Certificates

The number of permits that have completed the perfection period are listed in the table. A large number of permits were issued in the '70's and early '80's resulting in more files needing certificates for the '81-'90 time period. Files remaining to certify in the period '70 and earlier are primarily those with various complications such as small quantities perfected, or questions about the place of use that caused owners to be reluctant to discuss them. Getting appointments with these owners is very difficult so the Division of Water Resources has in the past set these old files aside, forgot about them, and moved on to others. The Division of Water Resources issued such large numbers of permits in the '70's and '80's that, for more than a decade, it did not have the resources to follow up with all the certificates. The Division has processed those that were the easy ones in the past. Now for those remaining, time has dimmed memories of past water management, and the ability to clearly interpret older records on these more difficult files. The Division has now put a renewed focus on certifying these files with Project Zeroed Out. Project design reflects a determination to not set a difficult file aside but to do the work and make decisions required to complete the certificate.

Dates since perfection period ended

Topeka Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Allen			1		
Anderson			4	2	
Atchison			4	3	
Bourbon			4		
Brown			1		2
Coffey			2	1	1
Cherokee			6	1	1
Chautauqua					1
Crawford			8	7	3
Clay	6		12	12	9
Douglas	1		8	7	3
Dickinson		1	16	8	5
Doniphan			5	1	1
Elk			2		
Franklin			18	6	
Geary	5	1	4	7	
Greenwood			6	1	2
Jackson			4	5	

Topeka Field Office (cont.) Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Jefferson	1	2	20	3	2
Johnson		2	9	19	4
Labette			8	2	
Linn			8	5	2
Leavenworth	1		9	4	2
Lyon			12		1
Montgomery			9	4	2
Miami			8		3
Morris	1	5		2	
Marshall	2		13	2	2
Nemaha			3		1
Neosho			7	2	3
Osage	3	1	11	3	1
Pottawatomie		2	21	16	7
Riley	2	1	12	4	2
Shawnee			26	15	7
Wabaunsee	1	1	11	8	8
Wilson		1	11	4	1
Washington		1	17	3	9
Wyandotte			10	5	1
total Topeka Field Office	23	18	330	162	86

Stafford Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -

Barber	6	6	8	3	1
Clark		3	10	3	1
Comanche	1	5	8		2
Decatur			4		1
Edwards		8	18	3	1
Hodgeman	1	2	10		
Harper	2	8	9	2	3
Kingman	7	22	26	9	2
Kiowa	1	2	20	1	3
Pawnee	1	15	13	2	4
Pratt	1	11	45	17	3
Reno	12	20	78	32	6
Stafford		6	19	17	2
Sedgwick	21	14	84	19	21
Sumner	4	3	23	8	3
total Stafford E.O.	57	125	375	115	53

Stockton Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Cloud		1	1	1	5
Cheyenne			2		1
Ellis		1	4		
Graham		5	6		
Gove			3		1
Jewell	1	1	1		2
Lincoln		2	2		4
Mitchell			1		2
Norton	1		1		
Osborne		3			
Ottawa	2	1	2		1
Stockton Field Office (cont.) Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Phillips		4	2		

Rooks		1		1	1
Russell			1		
Saline		1		1	
Sheridan			4		
Sherman			1		
Smith		2			
Thomas			2	1	1
total Stockton F.O.	4	22	33	4	18

Garden City Field Office Counties	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Finney	7	65	54	7	5
Greeley	4	21	24	1	3
Grant	15	45	47	6	
Gray	70	28	48	7	2
Hamilton		2	6	7	1
Haskell	11	47	92	5	2
Kearny	7	10	17	2	7
Lane		4	6		
Morton	11	18	24	6	10
Scott	15	56	94	21	10
Stanton	12	46	41	7	3
Stevens	5	45	56	8	21
Seward	11	23	38	6	8
Wichita	14	54	64	9	2
total Garden City F.O.	182	464	611	92	74

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Topeka & Stafford Butler	2	10	15	8	4

Cowley	5	7	25	11	4
Chase			4	2	1
Harvey	5	10	68	19	7
Marion	1		17	4	1
total Topeka & Stafford	13	27	129	44	17

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Topeka & Stockton Republic	1	1	3	4	10
Topeka & Stafford & Stockton McPherson	1	7	46	4	3

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Stafford & Stockton Barton	4	2	18	2	2
Ellsworth		3	2	1	
Ness	2	1	5		
Rice	4	5	22	11	4
Rush		1	6		
total Stafford & Stockton	10	12	53	14	6

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Stafford & Garden City Ford	8	43	71	24	4
Meade	8	6	33	3	11
total Stafford & Garden City	16	49	104	27	15

Counties in Multiple Field Offices	'70 and earlier	'71 - '80	'81 - '90	'91 - '95	'96 -
Stockton & Garden City Wallace	6	33	43		2

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Request No. 3 (Morris). Please clarify why your written testimony stated a backlog of 8,000 certificates, but your verbal testimony said 6,000.

Permits are approved and certificates are processed every day so the number of files within the system is dynamic. Therefore the number of files defined as backlog depends on the time frame. Approximate numbers of files needing certificates is described as follows.

- 8,000 files – The total number of permits to divert water that will potentially be certified. However, 2,000 of these have new permits but have not yet notified DWR of completion of diversion works.
- 6,000 files – All permits that are now diverting water (8,000 - 2,000) and are either still in the perfection period or have completed the perfection period. However, 2,500 of these are still in the perfection period and about 500 will complete the perfection period each year.

Therefore at this time about 3,500 files (6,000 - 2,500) have completed their perfection period and are awaiting a certificate (those accumulated today). However, by the time the 3,500 files are certified, another 2,500 will have completed their perfection period and need a certificate (at the present pace of processing).

This means in order to eliminate the backlog over the next several years, 6,000 certificates must be completed-- the 3,500 now waiting plus the 2,500 scheduled to complete the perfection period. Also, in this time frame, another 2,000 new applicants will have started their perfection period. DWR must complete more than 500 certificates each year to keep the backlog from increasing.

Project Zeroed Out has objectives that address this challenge.

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Request No. 4 (Morris) Clarify statement that most of the abandonments occurred after the hearing process— actually of the 32 water rights that have been abandoned since 1997, only 4 had hearings

There were 76 files reviewed in 1997 that did not show due and sufficient cause for non use and notices were sent. Status of these files is as follows:

- 28 failed to respond to the notice and were dismissed
- 2 were dismissed as abandoned after a hearing was held
- 2 were voluntarily forfeited by the owner after the hearing was held
- 44 responded and needed a hearing; 32 have had hearings but decisions are pending

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Request No. 5 (Clark). Information about any abandonment action, or water right permit or change application regarding the following people:

Terry Nelson- concerning Norton County water issues

Ben Ellegood- Gove County

Robert or R.D. Ellegood- Gove County

J.G. Porter - Logan County

Jim or Pat Porter- Logan County

Unknown name- Cheyenne County issue involving a water right that was perfected in 1981 but the wrong quarter was listed on the paperwork so now there is a problem with certifying the water on the proper quarter

Terry Nelson

Mr. Nelson filed applications for 23 permits to divert water, mostly in Norton County. These permits were primarily for water supply to confined hog facilities. These applications were approved in December 1998.

Terry Nelson has more than 75 water rights. A few are rural domestic but most are irrigation and livestock. The review of these water rights found:

no abandonment actions are underway on any water rights

16 changes in point of diversion or place of use have been approved from 1982-97

6 applications were dismissed prior to approval from 1996-98

Ben and Robert Ellegood (file 11,614)

Names on this water right are Robert D. Ellegood, Ben Ellegood, Kenneth Ellegood and Keith Ellegood as owners of parcels of land covered by this water right. The Division of Water Resources found this file not to be in good standing due to non use without due and sufficient cause. A formal inquiry about this water right was sent to Ben Ellegood in September, 1992 and again in 1995. Information available and provided to the Division indicated water diverted from 1981-1983 but apparently had not been used from 1984-1997. Reasons given prior to the hearing for not diverting water were the equipment was not in working order-- not sufficient cause for non use. A notice was issued to Ben, Kenneth and Keith Ellegood on May 15, 1998 and given 15 days to request a hearing. A hearing was held November 5, 1998 and a decision from the hearing officer is pending.

J.G. Porter (file 17,131 and 32,051)

J.G. Porter is the only name appearing on the water rights. Records indicate water pumped on file 17,131 from 1971-1979. No information was available on use from 1980-1984. Apparently the well was not used from 1984 - 1997. Records indicate water pumped on file 32,051 possibly in 1978, 1979, 1981, and 1983. Apparently the well was not used from 1984 - 1997. Inquiry was made by the owner in 1994 about the Water Resources Conservation Program. Information available indicated the wells had not been used and that the water rights were not in good standing until a due and sufficient cause for non use was provided. A formal notice to schedule a hearing was sent to the Attorney of Mary Porter, widow of Mr. Porter, on September 4, 1997. A hearing was held February 20, 1998 and the hearing officer upheld the Divisions position that the water rights had been abandoned. The decision was appealed by the Attorney representing the owner and the outcome of the appeal is pending.

Unknown name- Cheyenne County issue involving a water right that was perfected in 1981 but the wrong quarter was listed on the paperwork so now there is a problem with certifying the water on the proper quarter.

We were not able to determine the water right for this case without the owners name, or the water right file number. Our staff in Topeka and Stockton field office could not recall this issue.