

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 4, 2004 in Room 231-N of the Capitol.

All members were present except:

Representative John Faber- excused  
Representative Larry Powell- excused  
Representative Sharon Schwartz- excused

Committee staff present:

Raney Gilliland Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture, 109 SW 9<sup>th</sup>, Topeka, KS 66612-1283

Others attending:

See Attached List.

Chairperson Joann Freeborn called the meeting to order. She announced that next Tuesday, March 9, the committee meeting, which had been scheduled as "meeting on call of the chair", may be revised with a review on Geologic Carbon Sequestration by Kansas Geological Survey, Kansas University. Two bills, **SB416** - Allows cities and counties to use certain moneys for programs dealing with recyclables and **SB396** - Creates the radiation control operations fee fund, are scheduled for hearings on Thursday, March 11. Also, action may be taken on **SB463** - Exception to perfection of water rights concerning beneficial use.

The Chairperson opened hearing on **SB463**.

**SB463: Exception to perfection of water rights concerning beneficial use.**

David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture, was welcomed to the committee. He testified in support of the bill. The perfection, or development, of a water right occurs by the actual application of water to beneficial use as authorized by the permit to appropriate water. After notice of completion of the works for diversion of water and the use of water within the time allowed, the division of water resources inspects the project, determines how much of a water right has been perfected through the use of water within the limits of the original permit and issues a certificate of appropriation. This process constitutes the documentation and finalization of the water right, which is a real property right. The bill would amend KSA 82a-714©)(1), by providing one narrow exception to the July 1, 2004, deadline for issuing certificates of appropriation when abandonment proceedings are pending. Kansas Department of Agriculture also supports the bill, as amended by the Senate, which includes a new July 1, 2006 deadline for resolving the cases that would be allowed by the exception to the original 2004 deadline. (See attachment 1) Committee questions and discussion followed.

The Chairperson closed the hearing on **SB463**.

The meeting adjourned at 4:00 p.m. The next meeting is scheduled for Tuesday, March 9, 2004.



# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Testimony to the House Environment Committee

March 4, 2004

Senate Bill No. 463

David L. Pope, Chief Engineer

### Kansas Department of Agriculture's Division of Water Resources

Good afternoon, Chairperson Freeborn and members of the committee. I am David Pope, chief engineer of the Kansas Department of Agriculture's division of water resources. I am here in support of SB 463, which would amend K.S.A 82a-714(c) (1), by providing one narrow exception to the July 1, 2004, deadline for issuing certificates of appropriation when abandonment proceedings are pending. KDA also supports the bill, as amended by the Senate, which includes a new July 1, 2006 deadline for resolving the cases that would be allowed by the exception to the original 2004 deadline.

#### Background.

The perfection, or development, of a water right occurs by the actual application of water to beneficial use as authorized by the permit to appropriate water. After notice of completion of the works for diversion of water and the use of water within the time allowed, the division of water resources inspects the project, determines how much of a water right has been perfected through the use of water within the limits of the original permit and issues a certificate of appropriation. This process constitutes the documentation and finalization of the water right, which is a real property right.

K.S.A. 82a-714(c), as amended in 1999, sets certain deadlines for the issuance of certificates of appropriation. The chief engineer is required to certify an appropriation:

- 1) Before July 1, 2004, if the time allowed in the permit to perfect the water right expired before July 1, 1999, or
- 2) Not later than five years after the application of water within the time allowed in all other cases.

As of July 1, 1999, there was a backlog of about 3,500 permits for which the time to perfect a water right had expired and a certificate had not been issued, pursuant to criteria No. 1. In addition, approximately 400 new permits become ready for certification each year, pursuant to criteria No. 2.

By the end of 2003, we had issued about 5,200 certificates out of about 5,500 cases where the time to perfect had expired. Certificates were issued for all permits that did not have a question of abandonment pursuant to K.S.A. 82a-718, or for which the nonuse question could be resolved because of a finding of good cause for the nonuse of water.

**Issue.**

Of this group of 5,200 files, 418 cases had a question of abandonment to be resolved. To date, determinations have been made, or are in process, for 171 cases, leaving 247 to be resolved by certification, voluntary closure, or initiating an abandonment proceeding. If found not abandoned, the certification process for the water right would then be completed. We need time to resolve these remaining cases through the amendment provided by SB 463.

An active process is now underway to resolve those cases that require an abandonment hearing. So far, we have resolved the nonuse question and issued 46 certificates from this group of 418, received 31 voluntary closures, and prepared 94 verified reports, as required by law prior to an abandonment hearing. Of these 94 cases, we've had hearings on 40, and we expect to have most of the rest by July 1. In many cases, the water rights are declared abandoned when the owner does not attend the hearing or contest the matter.

We currently are having about 10 hearings a month. Based on the trend in how these cases resolve, it appears we may need another 134 hearings. We estimate it will take at least two more years to complete this process, assuming the current level of resources continues to be available, and allowing time for any appeals to be resolved, or certificates issued, if the right is not declared abandoned. We expect to have our initial review done, and to initiate contact with the individuals involved, by July 1, 2004.

Many of these rights have nonuse that exceed the five years allowed by law, and they do not have readily apparent good cause for the nonuse, but a final determination can't be made until the process is complete, including a hearing if necessary. These questions need to be resolved before certification to protect the legal status of these cases and avoid confusion. We also do not believe it makes sense to spend resources trying to certify the water right when there are nonuse questions that need to be resolved. In some cases, there is not a well or other diversion works to inspect, nor does it make sense to encourage the owner to invest in reestablishing the project if the right may be declared abandoned at a later time. Improper handling of this matter also may adversely affect other water users during periods of shortage, if a water right that should be declared abandoned is reactivated.

**Summary.**

We are current with the deadline set forth in KSA 82a-714(c), except for this small group of water rights that have nonuse questions. Given the current level of resources, we expect to stay current and certify water rights soon after the time to perfect the right expires. Avoiding future backlogs will allow us to use more current data, be more efficient and provide more timely information to the water right holder about the extent of perfection of their water right.

We would appreciate your support for SB 463 so we can avoid the inefficiency, as well as technical and legal problems, associated with a requirement to issue certificates of appropriation without adequate information, and to be provided adequate time to resolve nonuse questions in the proper manner and sequence for the remaining 247 cases.