

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Derek Schmidt at 8:30 a.m. on February 11, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research  
Lisa Montgomery, Office of the Revisor of Statutes  
Robert Myers, Committee Secretary

Conferees appearing before the committee:

David Pope - Chief Engineer, Kansas Department of Agriculture's Division of Water Resources

Others attending:

See Attached List.

Senator Huelskamp moved to approve the minutes of both the January 27 and 28 committee meetings, seconded by Senator Corbin. The motion carried.

**SB 463: Exception to perfection of water rights concerning beneficial use.**

Chairman Schmidt opened the hearing on **SB 463**.

David Pope appeared before the committee as a proponent of **SB 463**. He began his testimony by giving a brief background on the water perfection process, describing it as the actual beneficial application of water as authorized by the permit to appropriate water. He stated that a real property right is gained upon the finalization of the water right (i.e., upon the issuance of a certificate of appropriation by the division of water resources). He then stated that the issue addressed by the bill is the 1999 establishment of certain deadlines for the issuance of certificates of water appropriation, having occurred upon the amendment of K.S.A. 82a-714(c). More specifically, he indicated that these deadlines were established in order to address the backlog, in 1999, of approximately 3,500 permits for which the time to perfect a water right had expired prior to the issuance of a certificate of appropriation.

David Pope stated that a positive result of the 1999 amendments is that, by 2003, a certificate was issued to approximately 5,200 out of the approximately 5,500 cases in which water rights had expired. He also indicated the negative side of the situation though, pointing out that currently 247 out of these 5,200 cases of certification still need to be resolved due to questions of abandonment. Thus, he expressed the need for the amendment provided by this bill in order to allow more time to determine if or not abandonment has occurred. He continued by stating that, in addition to the above-mentioned 247 cases, thus far 171 unresolved cases have been addressed during approximately the last year. He provided the following specifics about these 418 total cases:

- 31 cases were resolved because the individuals involved admitted to the abandonment of their resources and did not contest the resulting loss of their respective water rights.
- 94 cases have not been able to be determined as involving abandonment.

David Pope informed the committee that the current number of hearings per month is approximately ten and that it is calculated that another 134 hearings will be needed in order to resolve the remaining cases. Thus, he expressed the need to implement the bill in question, in order to extend the current deadlines for the issuance of certificates of appropriation. To further stress this need, he stated that it would be unwise to jeopardize the legal position of the state by improperly issuing certificates of appropriation in order to comply with the current July 1, 2004 deadline (Attachment 1).

Chairman Schmidt provided the committee with the option of taking immediate action on **SB 463**, due to the lack of other items on the agenda for the meeting that day. The Chairman heard no objections to this option, and thus the bill was discussed at that time by the committee.

CONTINUATION SHEET

MINUTES OF THE SENATE AGRICULTURE COMMITTEE at 8:30 a.m. on February 11, 2004 in Room 423-S of the Capitol.

Senator Huelskamp moved to make a conceptual amendment to **SB 463** that would reduce the deadline extension to one year as opposed to two (i.e., July 1, 2005 as opposed to July 1, 2006), seconded by Senator Tyson.

Senator Downey made the substitute motion to extend the deadline to two years (i.e., July 1, 2006), seconded by Senator Tyson. The motion carried.

Senator Downey moved to report **SB 463** favorably for passage, seconded by Senator Lee. The motion carried.

The next meeting is scheduled for Tuesday, February 17, 2004.





# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Testimony to the Senate Agriculture Committee

February 11, 2004

Senate Bill No. 463

David L. Pope, Chief Engineer

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

Good afternoon, Chairman Schmidt 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.

#### 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.

Division of Water Resources David L. Pope, Chief Engineer

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Senate Agriculture  
February 11, 2004  
Attachment 1

**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.