

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 3:30 p.m. on March 12, 2009, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Mike Corrigan, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Pat Matzek, Committee Assistant

Conferees appearing before the Committee:

None

Others attending:

See attached list.

Representative Powell opened the meeting with distribution of Talking Points (Attachment 1) on HB 2272 from the Department of Agriculture.

Action on:

SB 64 - Water appropriation act amendments.

A balloon amendment (Attachment 2) by Representative Powell on SB 64 was distributed to members of the Committee. Representative Powell requested an explanation of the bill by Mike Corrigan, Office of the Revisor of Statutes, who stated that it would require the Chief Engineer of the Division of Water Resources to cooperate and coordinate with the board or boards of county commissioners, or their designees in advance of designating an intensive groundwater use control area and commencing the required proceedings.

Representative Moxley moved to adopt the balloon amendment. Representative Fund seconded the motion. As there was no clear determination of the voice vote, a division was called and by show of hands, the motion failed (10 to 8).

A discussion ensued by members of the Committee.

Representative Johnson made a motion to table the bill. Representative Lukert seconded the motion. By majority vote, the motion failed.

Back on SB 64.

Representative Moxley presented a balloon amendment (Attachment 3) to members of the Committee, which applies to Section (4) (g), inserting the phrase "sworn statement or" in front of the word "evidence". Representative Moxley moved to amend SB 64. Representative Fund seconded the motion. By majority vote of the Committee, the motion was carried.

The discussion by Committee members continued.

Representative Svaty moved to pass the bill out favorably as amended. Representative Navinsky seconded the motion. By majority vote of the Committee, the motion was carried.

Representative Johnson voted nay.

CONTINUATION SHEET

Minutes of the House Agriculture and Natural Resources Committee at 3:30 p.m. on March 12, 2009, in Room 783 of the Docking State Office Building.

Action on:

HB 2295 - Milk and dairy product labeling requirements.

Mike Corrigan, Office of the Revisor of Statutes explained the bill, stating in part, that milk, milk products and dairy products shall be deemed misbranded, as defined in K.S.A. 65-771, and amendments thereto, if the labels on the containers in which the products are sold or offered for sale contain any false or misleading statements as specified in this section.

A discussion ensued by members of the Committee.

Representative Svaty moved to amend the bill under Section (2), line 32, by striking the word "immediately", and on line 33 striking the word "exactly" and inserting the word "similar". Representative Moxley seconded the motion. By majority vote of the Committee, the motion was carried.

Representative Svaty moved to amend the bill under Section (2), line 42, by striking "shall be deemed false and misleading. Such statements" to read "and "BST Free" shall not be permitted." Representative Hineman seconded the motion. By majority vote of the Committee, the motion was carried.

Representative Fund moved to pass the bill out favorably as amended. Representative Kerschen seconded the motion. By majority vote of the Committee, the motion was carried.

Representative Kerschen will carry the bill.

The next meeting is scheduled for March 16, 2009.

The meeting was adjourned at 4:55 p.m.

Talking Points on HB 2272

- The chief engineer is required to manage the state's water resources even within GMD's
 - this is current law.
 - Today, the chief engineer can use first in time – first in right or an IGUCA to address a water problem
 - HB 2272 does not take away the responsibility of the chief engineer to manage water, just one of his tools – the IGUCA.
- KDA believes that local input is good, but there must be a safety valve in case the GMDs do not or cannot act
 - Jay Garretson, opponent testified that he believes that the Chief Engineer should have the IGUCA tool and that the GMDs have failed to manage water.
- The Chief Engineer is not going to just go into a GMD and initiate an IGUCA – there will be many discussions before an IGUCA is initiated, but if you want assurances that the GMD will be involved in any decision to initiate an IGCUA then HB 2065 is the perfect compromise
- HB 2065 provides a long list of steps that must occur before the chief engineer can initiate an IGUCA within a GMD. HB 2065 gives the GMDs many opportunities to address the water problem themselves; it is only after all the steps are exhausted and the problem still remains that the chief engineer can act
 - HB 2272 should not be passed out of committee – it changes current law, diminishes the chief engineer's authority and subjects water users to harsher measures to address water issues
 - If the committee believes some action regarding this issue should be taken, then HB 2272 should be "gutted" and the language from HB 2065 inserted and passed out of committee

SENATE BILL No. 64

By Special Committee on Eminent Domain in Condemnation of Water Rights

Proposed Balloon Amendment

1-21

water; relating to

and 82a-1036

11 AN ACT concerning the Kansas water appropriation act; amending
12 K.S.A. 82a-705 and 82a-707, 82a-707 and 82a-709 and K.S.A. 2008
13 Supp. 82a-701 and repealing the existing sections.

14 Be it enacted by the Legislature of the State of Kansas:

15 Section 1. K.S.A. 2008 Supp. 82a-701 is hereby amended to read as
16 follows: 82a-701. When used in this act, unless the context indicates oth-
17 erwise, the following words shall have the following meanings:

18 (a) "Person" shall mean and include a natural person, a partnership,
19 an organization, a corporation, a municipality and any agency of the state
20 or federal government.

21 (b) "Chief engineer" means the chief engineer of the division of water
22 resources of the Kansas department of agriculture.

23 (c) "Domestic uses" means the use of water by any person or by a
24 family unit or household for household purposes, or for the watering of
25 livestock, poultry, farm and domestic animals used in operating a farm,
26 and for the irrigation of lands not exceeding a total of two acres in area
27 for the growing of gardens, orchards and lawns.

28 (d) "Vested right" means the right of a person under a common law
29 or statutory claim to continue the use of water having actually been ap-
30 plied to any beneficial use, including domestic use, on or before June 28,
31 1945, to the extent of the maximum quantity and rate of diversion for the
32 beneficial use made thereof, and shall include the right to take and use
33 water for beneficial purposes where a person is engaged in the construc-
34 tion of works for the actual application of water to a beneficial use on
35 June 28, 1945, provided such works shall be completed and water is ac-
36 tually applied for such use within a reasonable time thereafter by such
37 person, such person's heirs, successors or assigns. Such a right does not
38 include, however, those common law claims under which a person has
39 not applied water to any beneficial use within the periods of time set out
40 in this subsection.

41 (e) "Appropriator" means and includes a person who has an appro-
42 priation right that has been perfected in conformity with article 7 of chap-
43

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Attachment 2

(+) (i) *if for municipal water supply, it shall give the present population to be served and estimated future requirements of the city;*

(+) (j) *any additional factors which may be required by the chief engineer.*

Such application shall be filed and approved before the commencement of any work in connection with the construction, enlargement or extension of any works for the diversion, storage, and use of water.

6. 10 ~~Sec. 4-5,~~ K.S.A. 82a-705 and ~~82a-707,~~ 82a-707 and ~~82a-709,~~ and
11 K.S.A. 2008 Supp. 82a-701 are hereby repealed. , and 82a-1036

7. 12 ~~Sec. 5-6,~~ This act shall take effect and be in force from and after its
13 publication in the statute book.

Sec. 5. K.S.A. 82a-1036 is hereby amended to read as follows: **82a-1036.** Whenever In a groundwater use area which is located within the boundaries of an existing groundwater management district or districts, only when a groundwater management district recommends the same or whenever a petition signed by not less than three hundred (300) 300 or by not less than five percent (5%) 5% of the eligible voters of a groundwater management district, whichever is less, is submitted to the chief engineer, the chief engineer shall initiate, as soon as practicable thereafter, proceedings for the designation of a specifically defined area within such district or districts as an intensive groundwater use control area. The chief engineer upon his or her such chief engineer's own investigation shall cooperate and coordinate with the board or boards of county commissioners, or such board or boards of county commissioners designee or designees, as the case may be, who shall be a person who has a demonstrated background in water policy and water use issues, of the specifically defined area or areas before the chief engineer may initiate such proceedings whenever said such chief engineer has reason to believe that any one or more of the following conditions exist in a groundwater use area which is located outside the boundaries of an existing groundwater management district: (a) Groundwater levels in the area in question are declining or have declined excessively; or (b) the rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area; or (c) preventable waste of water is occurring or may occur within the area in question; (d) unreasonable deterioration of the quality of water is occurring or may occur within the area in question; or (e) other conditions exist within the area in question which require regulation in the public interest.

2-2

SENATE BILL No. 64

By Special Committee on Eminent Domain in Condemnation of
Water Rights

1-21

Proposed Balloon
Amendment

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12 K.S.A. 82a-705 and ~~82a-707~~, **82a-707 and 82a-709** and K.S.A. 2008
13 Supp. 82a-701 and repealing the existing sections.
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15 *Be it enacted by the Legislature of the State of Kansas:*

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17 follows: 82a-701. When used in this act, unless the context indicates oth-
18 erwise, the following words shall have the following meanings:

19 (a) "Person" shall mean and include a natural person, a partnership,
20 an organization, a corporation, a municipality and any agency of the state
21 or federal government.

22 (b) "Chief engineer" means the chief engineer of the division of water
23 resources of the Kansas department of agriculture.

24 (c) "Domestic uses" means the use of water by any person or by a
25 family unit or household for household purposes, or for the watering of
26 livestock, poultry, farm and domestic animals used in operating a farm,
27 and for the irrigation of lands not exceeding a total of two acres in area
28 for the growing of gardens, orchards and lawns.

29 (d) "Vested right" means the right of a person under a common law
30 or statutory claim to continue the use of water having actually been ap-
31 plied to any beneficial use, including domestic use, on or before June 28,
32 1945, to the extent of the maximum quantity and rate of diversion for the
33 beneficial use made thereof, and shall include the right to take and use
34 water for beneficial purposes where a person is engaged in the construc-
35 tion of works for the actual application of water to a beneficial use on
36 June 28, 1945, provided such works shall be completed and water is ac-
37 tually applied for such use within a reasonable time thereafter by such
38 person, such person's heirs, successors or assigns. Such a right does not
39 include, however, those common law claims under which a person has
40 not applied water to any beneficial use within the periods of time set out
41 in this subsection.

42 (e) "Appropriator" means and includes a person who has an appro-
43 priation right that has been perfected in conformity with article 7 of chap-

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1 ter 82a of the Kansas Statutes Annotated and amendments thereto.

2 (f) "Appropriation right" is a right, acquired under the provisions of
3 article 7 of chapter 82a of the Kansas Statutes Annotated and amend-
4 ments thereto, to divert from a definite water supply a specific quantity
5 of water at a specific rate of diversion, provided such water is available
6 in excess of the requirements of all vested rights that relate to such supply
7 and all appropriation rights of earlier date that relate to such supply, and
8 to apply such water to a specific beneficial use or uses in preference to
9 all appropriations right of later date.

10 (g) "Water right" means any vested right or appropriation right under
11 which a person may lawfully divert and use water. It is a real property
12 right appurtenant to and severable from the land on or in connection with
13 which the water is used and such water right passes as an appurtenance
14 with a conveyance of the land by deed, lease, mortgage, will, or other
15 ~~voluntary~~ disposal, or by inheritance.

16 Sec. 2. K.S.A. 82a-705 is hereby amended to read as follows: 82a-
17 705. No person shall have the power or authority to acquire ~~an~~ a new
18 appropriation right to the use of water for other than domestic use with-
19 out first obtaining the approval of the chief engineer, and no water rights
20 of any kind may be acquired hereafter solely by adverse use, adverse
21 possession, or by estoppel.

22 Sec. 3. K.S.A. 82a-707 is hereby amended to read as follows: 82a-
23 707. (a) Surface or groundwaters of the state may be appropriated as
24 herein provided. Such appropriation shall not constitute ownership of
25 such water, and appropriation rights shall remain subject to the principle
26 of beneficial use.

27 (b) *The date of priority of every water right of every kind, and not*
28 *the purpose of use, determines the right to divert and use water at any*
29 *time when the supply is not sufficient to satisfy all water rights. Where*
30 *lawful uses of water for different purposes conflict have the same **date***
31 *of priority, such uses shall conform to have priority in the following order*
32 *of preference: Domestic, municipal, irrigation, industrial, recreational*
33 *and water power uses. However, the date of priority of an appropriation*
34 *right, and not the purpose of use, determines the right to divert and use*
35 *water at any time when the supply is not sufficient to satisfy all water*
36 *rights that attach to it. The holder of a water right for an inferior beneficial*
37 *use of water shall not be deprived of the use of the water either tempo-*
38 *rarily or permanently as long as such holder is making proper use of it*
39 *under the terms and conditions of such holder's water right and the laws*
40 *of this state, other than through condemnation.*

41 (c) As between persons with appropriation rights, the first in time is
42 the first in right. The priority of the appropriation right to use water for
43 any beneficial purpose except domestic purposes shall date from the time

1 of the filing of the application therefor in the office of the chief engineer.
2 The priority of the appropriation right to use water for domestic purposes
3 shall date from the time of the filing of the application therefor in the
4 office of the chief engineer or from the time the user makes actual use
5 of water for domestic purposes, whichever is earlier.

6 (d) Any water right returned to the state under the provisions of
7 K.S.A. 2-1915, and amendments thereto, shall be placed in the custodial
8 care of the state. While in the custodial care of the state, the priority of
9 the water right shall remain in effect and water available under the terms
10 and conditions of the water right shall not be considered available for
11 further appropriation. Any surface water right held in the custodial care
12 of the state shall neither directly benefit nor impair any other surface
13 water right within the stream reach designated for recovery. Any water
14 right donated to the state shall be placed in the custodial care of the state
15 or retired at the discretion of the chief engineer.

16 (e) Appropriation rights in excess of the reasonable needs of the ap-
17 propriators shall not be allowed.

18 **Sec. 4. K.S.A. 82a-709 is hereby amended to read as follows:**
19 **82a-709. No person may acquire ~~an~~ a new appropriation right to the**
20 **use of waters of the state for other than domestic purposes without**
21 **making an application to the chief engineer for a permit to make**
22 **such appropriation. However, any person using water for domestic**
23 **purposes subsequent to June 28, 1945, and any person intending to**
24 **use water hereafter for domestic purposes may make application to**
25 **the chief engineer for a permit the same as any other person. The**
26 **application shall set forth (a) the name and post-office address of**
27 **the applicant;**

28 **(b) the source from which said appropriation shall be made;**

29 **(c) the maximum rate at which water is to be diverted or used**
30 **and the total annual quantity of water sought;**

31 **(d) the location of the works or proposed works for the diversion**
32 **and use of the water;**

33 **(e) the estimated time for the completion of any proposed works;**

34 **(f) the time of the first actual application of the water to the**
35 **beneficial use involved, if there was such, and the estimated time**
36 **for the first actual application of the water for the beneficial use**
37 **proposed;**

38 **(g) ~~evidence of legal access to or control of the point of diversion and~~**
39 **place of use from the landowner, or the landowner's authorized**
40 **representative;**

41 **~~(g)~~ (h) if for irrigation use, a description of the land to be irri-**
42 **gated by designating the number of irrigable acres in each forty**
43 **(40) acre tract or fractional portion thereof;**

sworn statement or

1 ~~(h)~~ (i) *if for municipal water supply, it shall give the present*
2 *population to be served and estimated future requirements of the*
3 *city;*

4 ~~(i)~~ (j) *any additional factors which may be required by the chief*
5 *engineer.*

6 *Such application shall be filed and approved before the com-*
7 *mencement of any work in connection with the construction, en-*
8 *largement or extension of any works for the diversion, storage, and*
9 *use of water.*

10 ~~Sec. 4. 5.~~ K.S.A. 82a-705 ~~and 82a-707~~, *82a-707 and 82a-709* and
11 K.S.A. 2008 Supp. 82a-701 are hereby repealed.

12 ~~Sec. 5. 6.~~ This act shall take effect and be in force from and after its
13 publication in the statute book.

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