Approved: February 6, 2009
Date

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on January 29, 2009, in Room 446-N of the Capitol.

All members were present.

Committee staff present:
Jason Thompson, Revisor of Statutes Office
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Alissa Vogel, Committee Assistant

Conferees appearing before the committee:
Christopher Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks
Terry D. Holdren, National Director of Government Relations, Kansas Farm Bureau
John Donley, Assistant General Counsel, Kansas Livestock Association
Elmer Ronnebaum, General Manager, Kansas Rural Water Association

Others attending:
See attached list.

Senator McGinn introduced Chris Tymeson, Chief Legal Counsel for the Kansas Department of Wildlife and Parks, who spoke as a proponent of **SB 51 - Clothing requirements while hunting deer or elk**. (Attachment 1) Mr. Tymeson told the Committee that as deer and elk seasons have expanded, the statutes have not kept pace with the expanded seasons. The Department feels that removing these restrictions would be in line with the rest of the hunting seasons across the state.

Mr. Tymeson stood for questions. Senator Bruce made a motion to place the bill on the Consent Calendar. Senator Teichman seconded the motion, and the motion carried.

Senator Teichman requested the introduction of a bill regarding outfitter licensing. A motion was made by Senator Teichman to introduce the bill. Senator Abrams seconded the motion, and the motion carried.

Senator McGinn announced the hearing on **SB 64 - Water appropriation act amendments** and **SB 65 - Eminent domain; water rights**.

Raney Gilliland, from the Kansas Legislative Research Department, explained to Committee members that **SB 64**, by the Special Committee on Eminent Domain and Condemnation of Water Rights, examines the issue of condemnation of water rights through the use of eminent domain. This issue emanated from a wholesale water supply district's proposal to acquire water rights through the use of eminent domain in Douglas County. The case is currently being heard as a lawsuit before the Supreme Court. He provided Committee members with a background and explanation of the proposed amendments to the Water Appropriation Act, including modifications to the definition of a water right and clarification of language.

Terry Holdren, representing Kansas Farm Bureau, appeared in a neutral position on both **SB 64** and **SB 65**. However, he expressed concerns for both bills. (Attachment 2) The Farm Bureau opposes the proposed deletion of the word "voluntary" from the definition of a water right, located in the Water Appropriations Act. They feel it which would endanger land and water rights of landowners.

In regard to **SB 65**, Mr. Holdren expressed concern over the proposed removal of a water district's authority to use eminent domain for water acquisition. The Farm Bureau believes the authority is necessary to ensure adequate and safe water supplies for their districts. Recognizing the need to protect landowners against the violation of private property rights, he proposed an amendment that would require any applicant to obtain a signed consent form by the landowner or control of the property in question, within 30 days, prior to an application being processed or assigned a priority number by the Division of Water Resources. This will allow the landowner to voluntarily work with the water district in the negotiation of water rights.

Senator Francisco expressed the need to consider, in future debate, the possibility that a landowner may file for a water permit during the 30 days and the impact it would have on the priority order. Senator Lee noted

that the proposed amendment does not prevent the use of eminent domain. Senator Abrams suggested separating water and mineral rights, allowing landowners who lose water rights, to keep the mineral rights of the land.

John Donley, Assistant General Counsel from the Kansas Livestock Association (KLA), stood in opposition to **SB 64**, as a matter of fundamental fairness regarding private property rights. (Attachment 3) A bill meant to clarify statute, he explained, only adds to the confusion when deleting the word "voluntary." The bill would modify the definition to imply that eminent domain is allowed to obtain a water right. The need for an adequate drinking water supply is recognized. However, the Association believes that all available sources of water should be considered, and eminent domain should not become the de facto method.

The KLA is supportive of **SB 65**, in limiting the ability for an agency to use eminent domain to obtain water rights. The Association is also supportive of the amendment offered by the Kansas Farm Bureau, stating that if an entity has no legal interest in the land or consent of the landowner, the entity should not be granted a water appropriation permit or a change in use of an existing permit. He stated that more clarification and definition are needed to address the issue of obtaining water rights through the use of eminent domain.

Mr. Donley stood for questions. In response to concerns regarding the deletion of the word "voluntary" in **SB 64**, he suggested deleting the word "other," rather than "voluntary." Senator Taddikan expressed concern for the possibility that agencies would use eminent domain on a piece of land a municipality had previously purchased. The Committee was informed that agencies cannot use eminent domain on land purchased by municipalities or government entities.

Elmer Ronnebaum, General Manager for the Kansas Rural Water Association, expressed concern over **SB 65** and its impact on rural water districts, wholesale districts, watershed districts and groundwater management districts. (Attachment 4) Although the use of eminent domain to acquire water rights is rare, it is also vital that systems have this right to use if necessary. Mr. Ronnebaum fears that, with the loss of authority, systems will be unable to meet the needs of the public and increase supply costs to unreasonable prices.

Mr. Ronnebaum stood for questions. Clarification was given that agencies can begin the process to acquire water rights, prior to having access or control of land. However, before the permit can be granted, there needs to be a point of diversion on the land, whether it be a purchase of land or notification to the landowner of eminent domain proceedings.

The Committee requested a copy of the Beneficial Uses of Water, excerpted from K.S.A 82a-701 and K.A.R. 5-1-1.

The next meeting is scheduled for January 30, 2009.

The meeting was adjourned at 9:26 a.m.

SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

Jan. 29, '09
(Date)

Leslie Kaufman	KS Coop Council
Sean Miller	Capitol Strategies
Gregory Shipe	KRVG
Kent Askren	KFB
Terri Holdren	KFB
Lane Letourneau	EDA
Elmer Ronnebaum	KS Rural Water Assoc.
Meghan Walsh	Francis Intern
Kevin Brung	KRUG
Woody Moses	KAPA
Wendy Harms	✓
Pat Lehman	KRWA
Dreese	Water One

Please use black ink only!!

KANSAS
DEPARTMENT OF WILDLIFE AND PARKS

Kathleen Sebelius, Governor
J. Michael Hayden, Secretary

www.kdwp.state.ks.us

Testimony on SB 51 regarding Hunter (Blaze) Orange Requirements
To
The Senate Committee on Natural Resources

By Christopher J. Tymeson
Chief Legal Counsel
Kansas Department of Wildlife and Parks

29 January 2009

SB 51 seeks to amend one statute related to hunter orange requirements. The provisions of the bill would be effective on publication in the statute book. **The Department supports the provisions contained in SB 51 and requested introduction of the bill.**

SB 51 would amend K.S.A. 32-1015 to clarify when hunter orange is required for hunting elk or deer during elk or deer firearms seasons. Fort Riley conservation officials first approached the Department in regard to this topic in the fall of 2008. As elk and deer seasons have expanded, the statutes have not kept pace with the expanded seasons. Firearms elk seasons and archery deer seasons now overlap completely in some areas of the state and as a result, large numbers of archery deer hunters are required to wear hunter orange in those areas for a very, very small number of firearm elk hunters annually. While many other seasons for other species overlap with either firearm elk or firearm deer seasons, hunters hunting the other seasons and species are not required to wear hunter orange and the Department feels that removing this restriction on deer and elk is in line with the rest of the hunting seasons across the state.

The Department appreciates the opportunity to address the bill and the support of the Committee in making these modifications to the statute.

OFFICE OF THE SECRETARY
1020 S Kansas Ave., Suite 200, Topeka, KS 66612-1327
(785) 296-2281 • Fax: (785) 296-6953

Senate Natural Resources
January 29, 2009
Attachment #1

KANSAS FARM BUREAU
The Voice of Agriculture

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785-587-6000 • Fax 785-587-6914 • www.kfb.org
800 SW Jackson St., Suite 1300, Topeka, Kansas 66612-1219 • 785-234-4535 • Fax 785-234-0278

Kansas Farm Bureau
POLICY STATEMENT

Senate Committee on Natural Resources

SB 64 & 65

Re: Water rights and eminent domain

January 29, 2009
Submitted by:
Terry Holdren
National Director – KFB Government Relations

Chairperson McGinn and members of the Senate Committee on Natural Resources I am Terry Holdren, National Director – Government Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

As you know our membership across the state regularly encounters the Division of Water Resources in matters relative to the application process for and maintenance of water rights. Both Senate Bills 64 & 65 attempt to address recently identified issues with either our current water law or the application process for acquiring a water right. We appear before you today in a neutral position on both bills to share our concerns about the consequences that either approach may have and to offer a different and better solution.

First, with respect to SB 64 which proposes deletion of the word "voluntary" from the definition of a water right in the Kansas Water Appropriations Act, we have concerns about the implication of that change when land is condemned for a purpose that does not involve the water right associated with that land. The current statute offers protection to land and water right owners seeking to maintain control of the entire water right where a portion of their land is condemned but no access to the water right is sought.

Secondly, SB 65 in our opinion is overreaching in its attempt to address current issues across the state. In many instances our members and rural residents

Senate Natural Resources
January 29, 2009
Attachment #2

have greatly benefited from the establishment of rural water districts and other entities designed to provide adequate water supply. Unfortunately, at times, those districts don't always develop with complete cooperation and some authority to use eminent domain is appropriate to accomplish the goal of a safe and adequate water supply for all residents of the district. We would request that you proceed cautiously before completely removing that authority from these entities.

Recently KFB has become aware of multiple instances where the process for acquisition of a water right has been manipulated and misused in a manner that dramatically violates the private property rights of landowners across the state. It is that violation that we would like to focus on today and to seek your assistance to correct.

As stated, we are aware of applications for permits to appropriate water which have been filed with the Division of Water Resources by municipal water users with no knowledge/consent on the part of the owner of the land that constitutes the basis of the application. These applications have been held by the division – at times when the record clearly indicates that no landowner consent had been given – and even approved – again without any showing of legal access to the property in question.

KFB understands and supports the principle that water is owned by the state and that the right to use that commodity is granted through the appropriations process. We also firmly believe in the right and ability of landowners to enjoy and develop their property free from actions by entities that would reduce the potential value of that property or impede its future development. Those foundational beliefs are directly compromised when entities are allowed to make application for a permit to appropriate water using the land of others as the basis for the application with no showing of consent or other legal access prior to assigning priority or approval of the application.

K.S.A. 82a-708a allows for any person to apply for a permit to appropriate water upon the lands of another. Subsequent statutes require that the application be made in good faith and set the initial procedure for processing the application. These statutes were never intended to become a tool to allow parties who have neither consent nor control to gain a foothold in developing a water right on property they have legal access to.

Further, a standard condition attached to all Permits to Appropriate Water reads, "this permit does not ... authorize entry upon or injury to public or private property." It seems disingenuous at best to condition a permit in this manner when the evidence is clear and the chief engineer should be fully aware that the applicant has no legal access to the property.

We believe there is a simple procedural fix which can resolve this situation and provide adequate protection to property owners across the state. We have attached a proposed amendment to K.S.A. 82a-710 which would require the chief engineer to verify that any applicant has either consent of the landowner or control of the property in question prior to processing the application or assigning any priority. If proof cannot be made within 30 days then the chief engineer would be required to dismiss the application.

Thank you for your consideration of the proposed language as an alternative to the bills before you today. KFB stands ready to work with the committee to address the needs of rural and municipal water users while protecting the interests of property owners across Kansas.

Thank you.

For more information please contact:

Terry Holdren
Kansas Farm Bureau
800 SW Jackson, Suite 1300
Topeka, KS 66612
785.234.4535
holdrent@kfb.og

Kent Askren
Kansas Farm Bureau
800 SW Jackson, Suite 1300
Topeka, KS 66612
785.234.4535
askrenk@kfb.org

Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.

PROPOSED LANGUAGE ON LEGAL ACCESS FOR PERMIT APPLICATIONS

AN ACT concerning the appropriation of water; amending K.S.A. 82a-710.

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

Section 1. K.S.A. 82a-710 is hereby amended to read as follows: 82a-710. Upon receipt of the application it shall be the duty of the chief engineer to endorse thereon the date of its receipt and assign a number to the same. If upon examination the application is found to be defective, inadequate or insufficient to enable such official to determine the nature and amount of the proposed appropriation, it shall be returned for correction or completion or for other required information. No application shall lose its priority of filing on account of such defects, provided acceptable data, proofs, maps, plats, plans and drawings are filed in the office of the chief engineer within thirty days following the date of the posting of the return of such application or such further time not exceeding one year as may be given by the chief engineer.

All maps, plats, plans and drawings shall conform to prescribed uniform standard as to materials, size, coloring and scale, and shall show: (a) The source from which the proposed appropriation is to be taken, (b) all proposed dams, dikes, reservoirs, canals, pipe lines, power houses and other structures for the purpose of storing, conveying or using water for the purpose approved and their positions or courses in connection with the boundary lines and corners of the lands which they occupy. Land listed for irrigation shall be shown in government subdivisions or fractions thereof. Default in the refiling of any application within the time limit specified shall constitute a forfeiture of priority date and the dismissal of the application.

Before any application may be considered for approval by the chief engineer the applicant shall provide proof of legal access to the proposed point of diversion by a showing of consent of the landowner, or his or her authorized representative, in writing or by a showing of legal control of the property in question. If required proof cannot be shown within 30 days following the filing of the application then the chief engineer shall dismiss the application and any priority assigned thereto.

Section 2. K.S.A. 82a-710 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS LIVESTOCK ASSOCIATION

Since 1894

TESTIMONY

To: Senate Committee on Natural Resources
Senator Carolyn McGinn, Chair

From: John Donley, Assistant General Counsel

Date: January 29, 2009

Re: Condemnation of Water Rights

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 5,500 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.

Good morning Chairperson McGinn and members of the Committee. My name is John Donley, and I am Assistant General Counsel for the Kansas Livestock Association. I appreciate the opportunity to testify this morning to discuss KLA's position on the use of eminent domain to acquire water rights…more specifically, KLA's support of SB 65 and concerns regarding SB 64.

Condemnation of water rights raises a number of issues that concern our members. Many of the issues are similar to those that arose during the eminent domain debate a few years ago. During that debate the issue was whether it was appropriate for a public entity to take land from a private party and give it to another private entity for purposes of economic development. There are a number of similar issues created when a governmental entity applies for a water right on land that the entity holds no interest, then later seeks to condemn all or a portion of the land/water right.

SB 65 is a step in the right direction in regards to limiting the ability to use eminent domain to obtain water rights. However, it should be noted that there are likely more significant steps that need to be taken to fully address the issue of obtaining water rights through the use of eminent domain. This measure is a good start to begin looking at the issue of how eminent domain as it relates to obtaining water rights should be treated in Kansas.

KLA does not support the measures in SB 64. This bill appears to be attempting to eliminate some "confusion" in the statutes, but it seems to only add to the confusion with the proposed changes. The changes to K.S.A. 82a-707 may help clarify the language, but

Senate Natural Resources
January 29, 2009
Attachment #3

6031 SW 37th Street • Topeka, KS 66614-5129 • (785) 273-5115 • Fax (785) 273-3399 • E-mail: kla@kla.org • www.kla.org

it has the same legal effect as the current statute. The change to the definition of a water right in SB 64 is a provision that KLA does not support. By striking the word "voluntary" the definition would imply that eminent domain is allowed to obtain a water right. This would seem to be contrary to the policy behind SB 65.

KLA is also supportive of another proposal that Kansas Farm Bureau is likely to provide today. We believe it is a fair and equitable way to remedy the situation that the state is currently facing. There should be a change in state law that clearly requires an entity to either have the consent of the landowner or have an interest in the land in order to be granted a water appropriation permit or a change in use of an existing permit. It is fundamentally unfair for a landowner to have another entity apply for a permit without the landowner's consent. If an entity has no legal interest in the land or consent of the landowner, the entity should not be allowed to infringe upon the private property rights of the owner of the land.

Conclusion

It is fundamentally unfair for any entity to apply for a water right on land that they do not have any ownership interest or landowner consent. This is an issue of fundamental fairness that needs to be remedied. It is our belief that the Division of Water Resource's existing regulation with the time limitations imposed in K.S.A. 82a-710 does not allow for the application for a water right to be halted indefinitely while a water district or other entity goes to court to force their way onto the land. An entity should not have the ability to file for an application for appropriation before having legal access to the land.

KLA members recognize the public's need for an adequate drinking water supply. However, it is also important to balance that need with the private property rights that we all enjoy. Therefore, any policy developed to provide for adequate drinking water should also take into account the fact that all available sources of water are considered and eminent domain does not become the de facto method of sourcing water for municipal needs. KLA members feel that the marketplace should provide the place where municipalities and other entities go to meet their water needs. Agriculture has operated under this framework, and other water users should be able to meet their water needs by purchasing the water necessary in the open market without the threat of eminent domain hanging over landowners' heads and limiting their private property rights.

KANSAS
RURAL
WATER
association
Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 785/336-3760
FAX 785/336-2751 • http://www.krwa.net

Comments on Senate Bill 65
Before the Senate Natural Resources Committee
January 29, 2009

Madam Chair and Members of the Committee:

The Kansas Rural Water Association appreciates this opportunity to comment on SB 65. Kansas Rural Water Association is a non-profit Association that provides training and technical assistance to cities, rural water districts, public wholesale water supply districts and other non-community water systems such as trailer courts and schools. The Association's membership presently includes 455 cities and 275 rural water districts and 12 public wholesale districts.

The Kansas Rural Water Association respectfully suggests that the use of eminent domain by public wholesale districts, cities or rural water districts to acquire water rights or to access land to develop a water right is very rare. The exercise of eminent domain by a public water system would also only be a last resort. KRWA is only aware of one case where a city exhausted all options prior to filing eminent domain to obtain a water right.

While SB 65 addresses public wholesale districts, watershed districts, the board of education and ground water management district, cities and rural water districts are concerned about the potential impact such prohibitions might have on them. The development of public wholesale districts is in some cases the only option that some small cities and RWDs have to their present aged, non-compliant public water supplies.

While the use of eminent domain to acquire water rights for use by public water supplies is exceedingly rare, the Association believes it is vitally important that systems have the right to use this power if necessary. Elimination of the power altogether could result in an inability for some systems to meet the needs of the public or allow for such supplies to be obtained only at wholly unreasonable prices. For the same reasons that the right to use eminent domain is necessary for road, bridge and sewer projects, it is equally important that water systems have access to this inherent governmental power.

We also continue to hold that the permitting process for water rights applications in Kansas is independent of land acquisition for access to any such rights.

For this reason, the Kansas Rural Water Association asks that you not support SB 65. Thank you for your consideration.

Respectfully,

Elmer Ronnebaum

Elmer Ronnebaum
General Manager

Senate Natural Resources
January 29th 2009
Attachment #4