

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 February 11, 2010, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Johnson - Excused
Representative Light - Excused
Representative Lukert - Excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Pat Matzek, Committee Assistant

Conferees appearing before the Committee:

Wayne Bossert, Manager, Northwest Kansas Groundwater District No. 4,
and on behalf of Equus Beds Groundwater Management District No. 2,
and on behalf of Big Bend Groundwater Management District No. 5
Constantine Cotsoradis, Deputy Secretary of Agriculture, Kansas Department of Agriculture
John Donley, Assistant General Counsel, Kansas Livestock Association
Edward Moses, Managing Director, Kansas Aggregate Producers Association
Mark Rude, Executive Director, Southwest KS Groundwater Management District No. 3,
and on behalf of Western KS Groundwater Management District No. 1

Others attending:

See attached list.

Chairman Powell began the meeting with the hearing on **HB 2565** - Conservation exception for nonuse of water rights.

PROPONENTS:

Wayne Bossert, Manager, Northwest Kansas Groundwater District No. 4 (Attachment 1), presented testimony in favor of **HB 2565**, stating that with the elimination of the Water Rights Conservation Program, and because conservation is so important, there has been a flurry of activity to find an acceptable replacement and that **HB 2565** is one of these conservation-oriented approaches. Mr. Bossert further advised the bill is simple in that it provides due and sufficient cause for any year of nonuse for any well whose local supply is from within a closed area as long as the well is environmentally maintained. Mr. Bossert also represents Equus Beds Groundwater Management District No. 2, and Big Bend Groundwater Management District No. 5.

Constantine Cotsoradis, Deputy Secretary of Agriculture, Kansas Department of Agriculture (Attachment 2), spoke in favor of **HB 2565**, advising the bill provides that a lawfully maintained well in areas closed to new appropriations by the chief engineer is due and sufficient cause for nonuse of water which is likely to dispel the notion of "use it or lose it", and encourages conservation of water in these over-appropriated areas in the state. Mr. Cotsoradis stated that **SB 510** is currently in the Senate Natural Resources Committee which is very complementary to **HB 2565** and provides another option for conservation. With Chairman Powell's approval, a copy of the language contained in **SB 510** was distributed to members of the Committee (Attachment 3).

John Donley, Assistant General Counsel, Kansas Livestock Association (KLA) (Attachment 4), appeared as a proponent of **HB 2565**, commenting that KLA is generally supportive of measures that encourage water conservation practices. Mr. Donley further stated that under current law, if a water right owner has not made a lawful, beneficial use of the water for five consecutive years, the water right is considered abandoned, and the owner of that right will lose the water right. Therefore, there is an incentive to pump groundwater even when it may not be necessary in order to avoid a determination by the Division of Water Resources that the water right has been abandoned. This bill will correct that problem in areas closed to new appropriations.

CONTINUATION SHEET

Minutes of the House Agriculture and Natural Resources Committee at 3:30 p.m. on February 11, 2010, in Room 783 of the Docking State Office Building.

Edward Moses, Managing Director, Kansas Aggregate Producers Association, spoke in favor of **HB 2565** (Attachment 5), commenting that passage of **HB 2565** by allowing "conservation" as a "due and sufficient cause" for nonuse of water would enhance the long term sustain ability and viability of the sand and gravel industry by allowing sand and gravel producers to place water rights into a conservation mode until they are actually needed. Mr. Moses further stated that Kansans consume over 20 millions of sand and gravel a year, yet the resources to sustain this activity have been declining for the last 80 years and if we are to have these resources available to future generations, the planning and provision for them must occur now.

Mark Rude, Executive Director, Southwest KS Groundwater Management District No. 3 (GMD3), and on behalf of Western KS Groundwater Management District No. 1, appeared as a proponent on **HB 2565** (Attachment 6), stating the benefit of **HB 2565** is to avoid the waste of expensive pumps and equipment that can happen when well owners are required to keep their idol equipment installed and unused for years. GMD3 believes the requirement to keep equipment installed in the aquifer is unnecessary and non-beneficial to the proper management and protection of the groundwater resources, provided the water well is safely maintained in a manner consistent with the Groundwater Exploration and Protection Act. Mr. Rude further commented that the purpose of this bill is to recognize that there is no pressure on the water user in a closed or over appropriated area where they have to operate that well to maintain their water rights and goes a little further than the agency drafted rules and that is to say that they have authority not have to keep equipment there in the well.

After questions posed by members of the Committee, the hearing was closed on **HB 2565**.

Chairman Powell asked Vice Chairman Fund to meet with interested parties to draft a balloon on **HB 2565** to address concerns and possibly work the bill on Monday or Tuesday of next week.

The next meeting is scheduled for February 15, 2010.

The meeting was adjourned at 4:10 p.m.

AG. & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: Feb. 11, 2010

NAME	REPRESENTING
John Donley	KS Lusk Assn
STEVE FROST	SEC
Paul Graves	KDA
LANE LETOURNEAU	KDA
SEAN MILLEC	CAPROL STRATEGIES
WAYNE BOSSERT	NW KS GMD 4
Steve Swartz	KFB
Dave Hollhaus	KEC
Erik Wisner	KDA
Wendy Mathews	KAPA
Willy Moss	KAPA
Chris Wilson	GMA3
Ken Askren	KFB
Leslie Kaufman	Ks Co-op Council
Dave Hollhaus	KEC

Testimony RE: HB 2565

Provided By:

Equus Beds Groundwater Management District No. 2
Northwest Kansas Groundwater Management District No. 4
Big Bend Groundwater Management District No. 5

February 11, 2010

HB 2565

An ACT concerning water resources; relating to abandonment and termination; creating a water conservation exception.

BACKGROUND:

With the elimination of the Water Rights Conservation Program (WRCP), and because conservation is so important, there has been a flurry of activity to find an acceptable replacement. HB 2565 is one of these conservation-oriented approaches.

HB 2565 is simple in that it provides due and sufficient cause for any year of nonuse for any well whose local supply is from within a closed area - so long as the well is properly (environmentally) maintained. Under this statutory authorization any qualifying well that does not pump would automatically have due and sufficient cause for the nonuse, and would retain the water right in its entirety.

Other conservation-oriented efforts include currently pending regulations being promulgated by the division of water resources, Kansas Department of Agriculture that: a) add a new due and sufficient cause for nonuse; and b) craft a new water right conservation program pending passage of SB 510 which authorizes a new beneficial use of water – Conservation Use.

Each of these efforts and approaches has its own advantages and disadvantages.

CONCERNS & COMMENTS:

1. GMD's 2, 4 and 5 have always felt that there must be a reasonable process to determine when a water right has been abandoned and to forfeit that right if it has truly been abandoned. In the absence of such a process, only volunteer abandonments would occur. Some would argue that in a closed area where any abandoned water right cannot be re-appropriated anyway, what is the harm in this situation. There is no immediate harm, but the biggest problems may occur down the road. For example, if and when it comes time to administer a water-resource area, the unused water rights resulting from HB 2565 participation will still be valid rights and will be part of any administration solution. This simply means less water for every water right in the administered area – both those being used and those not being used.
2. Our second concern is the terms "closed to new appropriations" and "lawfully maintained well". We have already experienced difference of opinions on both terms during the entire water conservation process.

Ag & Natural Resources Committee

Date 2-24-10

Attachment 1

RECOMMENDATIONS:

- 1) A combined, holistic approach to crafting a new water/water rights conservation program in Kansas be considered that incorporates the best elements of all the individual efforts. A suggested proposal is:
 - a) Pass SB 510 with the following 3 concepts added to the statutory language: (1) the diversion works (pump, gear head and power source) will not have to be maintained; (2) the change TO conservation will not be subject to consumptive use rules; and (3) consumptive use rules will not apply to changes FROM conservation only when the change is back to the original use type AND there is no change in point of diversion in excess of 300 feet (a short move re-drill).
 - b) Urge DWR to promulgate regulations required to implement their conservation use program in accordance with the appropriate summary concepts they have already expressed and which have been attached to this testimony as Attachment 1.
 - c) Add a second conservation use alternative (also requiring passage of SB 510) providing for a multi-year conservation term permit of 5 to 10 years with controlled extension(s) which: (1) prohibits all use under the groundwater term permit; (2) does not require the diversion works to be maintained but requires the well to be maintained per Article 12; and (3) is patterned after the multi-year flex account term permit (KSA 82a-736) such that it requires a filing fee for administrative costs. This additional alternative could be authorized statutorily within SB 510 or entirely by regulation of the chief engineer. It could even exist instead of the first alternative, although GMD's 2, 4 and 5 are not recommending this.
 - d) Withdraw HB 2565 – no longer needed if the above, holistic approach is implemented.

With these four actions, Kansas will have a new beneficial use type of “conservation use” that has two conservation alternatives for water right holders – a broad term (including long term) and a limited term choice. While one choice has less certainty on the ultimate condition of the water right because it is a formal change of the right, it has the benefit of significant longevity. The other choice is a definite, shorter term conservation option, but being a term permit has the certainty of the status of the water right when its term expires and it converts back to the original water right. Both insure no water use while the right is in the conservation mode. The added multi-year conservation use term permit also fits hand-in-glove with the federal EQIP conservation program – thus allowing some participants to utilize this program.

This holistic approach appropriately fee funds the entire conservation process. For those opting for the multi-year conservation option there is a definite and controllable term to the conservation status.

- 2) GMD's 2, 4 and 5 thus support the important intention of HB 2565 – an effective water conservation program for Kansas - but are hoping a more holistic approach can be implemented.

Attachment 1:

Kansas Department of Agriculture – Conservation Use Bill Summary – February 2, 2010

1. What does the bill do?

- a. Recognizes conservation as a distinct beneficial use of water, statewide, with no time limit.
- b. Because conservation use is a beneficial use, a conservation use water right that is properly maintained is not subject to abandonment actions.
- c. While a water right's use is designated as conservation, the diversion of water is prohibited. Like other water rights, it does not guarantee the future availability of water supplies.
- d. Substantially improves upon WRCP in three ways:
 - i. Gives legal status to conservation, providing protections not available under the WRCP or the Kansas water banking act, K.S.A. 82a-761 *et seq.*
 - ii. Allows flexibility. The owner can choose how long to keep his water right in conservation use. He's not tied into a term contract, as in WRCP.
 - iii. Pays its own way through the change fee process.

2. If enacted, how will a conservation use water right work in practice?

- a. Because it is limited to vested and certified rights, the attributes of a conservation right are known and established up front.
- b. When a right (such as an irrigation right) is changed to a conservation use right, diversion will be prohibited, but the water right, properly maintained, will be protected from abandonment.
- c. Under rules yet to be developed, it is expected that:
 - i. Annual water use reports will be required;
 - ii. Diversion works such as the pump, gear head, and power source will not have to be maintained, but water level measuring devices will be required; and
 - iii. The change to conservation use will not be subject to consumptive use rules.
- d. When a conservation use right is changed to a different right:
 - i. Per existing law, changes cannot impair existing rights.
 - ii. It is expected that the consumptive use rules regarding change in use made of water will be applied to the former, diverting use, and as otherwise appropriate under law.
- e. How will a conservation use water right affect other rights?
 - i. It may benefit them, by reducing groundwater drawdown and improving streamflows.
 - ii. Owners of rights have the same protections under the common law as before.
- f. Further details will be worked out in rules and regulations, in cooperation with stakeholders. (highlight added by DWR/KDA)

**Testimony on House Bill 2565
to
The House Agriculture and Natural Resource Committee**

**by Constantine V. Cotsoradis
Deputy Secretary
Kansas Department of Agriculture**

February 11, 2009

Good afternoon, Chairman Powell and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture, and I am here in support of House Bill 2565.

This bill provides that a lawfully maintained well in areas closed to new appropriations by the chief engineer is due and sufficient cause for non-use of water. This is likely to dispel the notion of "use or lose it" and encourage conservation of water in these over-appropriated areas in the state.

We have a proposed regulation that contains similar language as this bill. It is scheduled for a public hearing in April. We will proceed with the public hearing on the new regulation. If this bill becomes law, we will delete the duplicative due and sufficient cause language from our regulation.

I will answer questions at the appropriate time.

Ag & Natural Resources Committee
Date 2-24-10
Attachment 2

- (a) As used in this section, "conservation use" means the maintenance of a water right for future use.
- (b) Conservation use shall be a distinct beneficial use *made* of water. Diversion under a conservation use water right shall be prohibited.
- (c) A vested or certified water right which has not been deemed abandoned pursuant to K.S.A. 82a-718, and amendments thereto, may be changed to a conservation use pursuant to K.S.A. 2009 Supp. 82a-708b and amendments thereto, and any rules and regulations as promulgated by the chief engineer. *A conservation use water right shall retain the attributes, terms and conditions of its immediately prior use, including priority, authorized quantity, rate of diversion, point of diversion, place of use, and source of supply, pursuant to K.S.A. 2009 Supp. 82a-701 et seq. and K.S.A. 2009 Supp. 82a-1020 et seq., and amendments thereto, and any rules and regulations as promulgated by the chief engineer.*
- (d) A conservation use water right may be changed pursuant to K.S.A. 2009 Supp. 82a-708b, and amendments thereto, and any rules and regulations *as* promulgated by the chief engineer.



Since 1894

TESTIMONY

To: House Agriculture and Natural Resources Committee
Representative Larry Powell, Chairman

From: John Donley, Assistant Counsel, Kansas Livestock Association

Date: February 11, 2010

Re: HB 2565 – Conservation exception for nonuse of water rights

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 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 afternoon Mr. Chairman and members of the Committee. My name is John Donley, and I serve as Assistant Counsel for the Kansas Livestock Association. I appreciate the opportunity to testify this afternoon in support of HB 2565.

KLA is generally supportive of measures that encourage water conservation practices. Under current law, if a water right owner has not made a lawful, beneficial use of the water for 5 consecutive years, the water right is considered abandoned, and the owner of that right will lose the water right. Therefore, there is an incentive to pump groundwater even when it may not be necessary in order to avoid a determination by the Division of Water Resources that the water right has been abandoned. This bill will correct that problem in areas closed to new appropriations.

The Kansas Department of Agriculture has sought the introduction of a bill in the Senate (SB 510) that seeks to recognize conservation. We are generally supportive of such efforts to recognize conservation practices. However, we do not support the loss of any portion of the appropriated right if a water right holder claims "conservation" as a beneficial use then later uses the water right for its original purpose (such as irrigation, livestock watering etc.). KLA has had discussions with the department about our concerns, and it is our understanding that the department is in agreement and is working on language that will address these concerns.

I appreciate the opportunity to testify before the committee in support of HB 2565 and other proposed concepts that will encourage water conservation practices while also protecting the property rights of the owners of water rights. I would be happy to stand for questions at the appropriate time. Thank you.

Ag & Natural Resources Committee
Date 2-24-10
Attachment 4

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: February 11, 2010
Before: The House Agriculture & Natural Resources Committee
By: Edward R. Moses, Managing Director
Kansas Aggregate Producers Association
Regarding: HB 2565 – Conservation as a due and sufficient cause for non-use of water

Good afternoon Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today and provide our comments in support of HB 2565. My name is Edward Moses, Managing Director, of the Kansas Aggregate Producer's Association. The Kansas Aggregate Producer's Association is a trade association comprised of sand & gravel and rock producers located throughout Kansas. With approximately 200 members our mission is to provide the 25-30 million tons of aggregate consumed by Kansans every year.

As with all Kansans access to water is critical to both our daily lives and our future. For those who work hard in the Kansas sand & gravel industry this is no less true. The extraction of sand & gravel, most generally in the alluvial aquifer, requires long processing times and huge capital investments. Often times it will take 30 to 50 years to complete operations. Yet, under current water law it is necessary to acquire, at the beginning of extraction, all the water needed to complete the operation 50 years hence. Passage of HB 2565 by allowing "conservation" as a "due and sufficient cause" for the nonuse of water would enhance the long term sustainability and viability of our industry by allowing sand & gravel producers to place water rights into a conservation mode until they are actually needed.

Kansans, in their daily lives, consume over 20 million tons of sand & gravel per year, yet the resources to sustain this activity have been declining for the last 80 years. If we are to have these resources available to future generations the planning and provision for them must occur now. We urge you to do so by recommending HB 2565 favorable for passage as it will provide a great tool for the sustainability of our future resources.

Thank you for your time and attention. I will be happy to respond to any questions at the appropriate time.

Ag & Natural Resources Committee
Date 2-24-10
Attachment 5

**Western Kansas Groundwater Management District No. 1
&
Southwest Kansas Groundwater Management District No. 3**

TESTIMONY TO HOUSE AG & NATURAL RESOURCES COMMITTEE

Proponents for HB 2565, February 11, 2010

Mark Rude, Executive Director, GMD3
2009 E. Spruce Street
Garden City, Ks 67846
Phone # 620-275-7147
Fax # 620-275-1431

Issue supported

Clarify the right of groundwater users in an over appropriated area to conserve water without waving to have unused equipment in the aquifer as long as the well is safely maintained

COMMENTS:

The Kansas Department of Agriculture recently announced proposed changes to K.A.R. 5-7-1 for a public hearing on April 7, 2010. The proposed amendments include a new reason considered due and sufficient cause. K.A.R. 5-7-1(a)(11) Proposes "The water right is located in an area of the state that is closed to new appropriations of water by regulation or order of the chief engineer but is not closed by a safe yield analysis." This is very similar to the language in HB 2565. However, another proposed addition in K.A.R. 5-7-1(b)(2) further requires "..., the owner shall maintain the diversions works in a functional condition."

The benefit of HB 2565 is to avoid the waste of expensive pumps and equipment that can happen when well owners are required to keep their idol equipment installed and unused for years. We believe the requirement to keep equipment installed in the aquifer is unnecessary and non-beneficial to the proper management and protection of the groundwater resources, provided the water well is safely maintained in a manner consistent with K.S.A 82a 1201(the Groundwater Exploration and Protection Act). The preferred method to address the need for HB 2565 is for the chief engineer to remove or revise the proposed K.A.R. 5-7-1(b)(2). In that regard, We agree in the concepts expressed by the other Groundwater management districts. However, absent any other actions of the legislature to address the benefits of wells safely maintained without mandatory equipement, we support HB2565 and I will stand for questions.

Ag & Natural Resources Committee
Date 2-24-10
Attachment 6