

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, in regard to 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.

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

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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.