

MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 9:00 a.m. on January 19, 2012, in Room 783 in the Docking State Office Building.

All members were present except:

Representative Michael Peterson (Unexcused)

Committee Staff Present:

Sean Ostrow, Office of the Revisor of Statutes

Raney Gilliland, Kansas Legislative Research Department

Christopher Sevedge, Kansas Legislative Research Department

Joyce Hladky, Committee Assistant

Conferees appearing before the committee:

Gary Harshberger, Kansas Water Authority

Chris Wilson, Department of Agriculture

Steve Swaffer, Kansas Farm Bureau

Leslie Kaufman, Kansas Cooperative Council

Sean Miller, GMD #3

Mike Beam, Kansas Livestock Association

Representative Vince Wetta on behalf of J.C. Long

Kris Kobach, Secretary of State

Chris Tymeson, Legal Counsel, Department of Wildlife and Parks

Others attending:

See Attached List.

Chairman Powell welcomed the committee.

Raney Gilliland provided background on water resources in the state of Kansas and **HB2451 Concerning water; relating to water right abandonment; amending K.S.A. 2011 Supp. 82a-718 and repealing the existing section.** While Kansas has experienced some seasons of sufficient water, for the most part, it is a water-short state and there has been a lot of regulation of water resources in the state. As Mr. Gilliland discussed water administration in Kansas, he

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pointed out that the Legislature has not allowed any one entity to have control of water in the state and for that reason, water planning is under the responsibility of the water office, water quality is under the responsibility of the Kansas Department of Health and Environment, and water appropriations is with the chief engineer in the division of water resources which is housed within the Department of Agriculture.

Mr. Raney further reported that the appropriation of water rights is addressed in the **HB2451**. Water rights can be ground water or surface water and in Kansas we recognize the association of surface water with ground water. Also in Kansas, special authority has been given to the chief engineer in water resources separate from the secretary of agriculture, even though it is housed within the Department of Agriculture. The reason for this is because not all water appropriations are agriculturally appropriated. The statute provides for beneficial uses of water and in rules and regulations by the chief engineer, there are many beneficial uses, including stock watering, municipal, recreation, industrial water power, artificial recharge, hydraulic dredging, contamination remediation, sediment control, thermal exchange, and water and fire protection. Due to the wide beneficial uses of water in the state, the Legislature has considered putting this I one entity so everyone knows where to come. This is something they considered for 30+ years.

The section that is being amended is the one that deals with water right abandonment. Specifics in bill – change on page 2 of the bill and its strikes some language. This language was added in by Legislature in 2010. As far as history is concerned, we dealt with this issue without this provision. Since 2010 we've had this provision in the law, notwithstanding the provisions of subsection A which provides for abandonment.

This language strikes the provision that requires a means of diversion available to put that water to a beneficial use within a reasonable time. Under language of new proposal in a ground water rights situation, an area closed to further appropriation, there would no longer need to be a means of diversion in that area. So a person could have the water right, not have a means of diversion and hold on to the water right in those particular areas in perpetuity.

The Committee Chair recognized Gary Harshberger, Chair, Kansas Water Authority. Mr. Harshberger spoke in favor of the proposed change in **HB2451** so that it is clear to all groundwater users in areas closed to new appropriations their water right is no longer at risk of

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abandonment due to non-use. This change will signal a shift for the Ogallala aquifer from a culture of development to a culture of conservation. ([Attachment 1](#))

Chris Wilson, Deputy Secretary of Agriculture with the Kansas Department of Agriculture, thanked the Committee for consideration of **HB2451** which would amend the water right abandonment statute to provide that a water right in an area closed by rule or order of the chief engineer to new appropriations, with ground water as the source, has due and sufficient cause for non-use and shall be deemed abandoned. The provisions removes the “use it or lose it” doctrine from the abandonment statute for closed areas, which sends the signal that water may be conserved and does not have to be put to use in order to preserve the water right.

The Governor proposed to repeal the “use it or lose it” doctrine of our water law, with the purpose to move from a development policy to a conservation ethic.

A water right is a real property right of the land on which it is established. It transfers with land unless expressly withheld. However under the abandonment statute, the property right may be lost if it is not use. **HB2451** would provide for protection of water rights from unintentional forfeiture and help promote conservation.

While relative few water rights are abandoned each year, some are non-voluntary and the prospect of losing water right through non-use is a concern to many water right holders. There are definitely those who only pump water in order to preserve a water right. **HB2451** would send the signal to those water right holders, in areas closed to further appropriations, where groundwater is a source they are free to conserve water without the fear and risk of losing the water right. ([Attachment 2](#))

Steve Swaffar, Natural Resources Director, for the Kansas Farm Bureau, spoke in favor of **HB2451**. Mr. Swaffar expressed appreciation on behalf of Kansas Farm Bureau for the efforts of the Ogallala Aquifer Advisory Committee and their efforts to address the question concerning use of water in areas of the state closed to new appropriation.

HB2451 puts to rest the question of unnecessary use of water rights in areas of the State officially closed to new appropriations of water. With the passage of **HB2451** producers in

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Western Kansas can now put aside their concerns with respect to the usage of water only to preserve the water right and avoid abandonment proceedings, “use it or lose it.” (Attachment 3)

Leslie Kaufman of the Kansas Cooperative Council and Ron Seeber, Kansas Grain & Feed Association, Kansas Agribusiness Retailers Association added their support of **HB2451** and supported all of the reasons and rationale provided in the earlier testimony. (Attachment 4)

Sean Miller of Kansas Groundwater Management Districts (GMDs), spoke in support of HB2451 to focus a shift from the previous culture where water users exercised the need to pump in order to protect their water right, to a culture of conservation. Mr. Miller stated that **HB2451** helps foster the shift by protecting producers from abandonment of their water right within areas of closed to new appropriation. (Attachment 5)

Mr. Mike Beam of the Kansas Livestock Association spoke in support of **HB2451** noting the change in the proposed legislation should enhance conversation facilitating for the water holder who chooses to put their water use on hold for more than five successive years the ability to refrain from pumping. The bill also brings the assurance they will not have to challenge an abandonment or water right termination by the Division of Water Resources. Kansas Livestock Association applauds all of the stakeholders for their action on this issue and the resolve to amend the water use law accordingly. (Attachment 6)

Representative Vince Wetta presented written testimony on behalf of J.C. Long of Wellington, Kansas. Mr. Long provided his written testimony in support of **HB2451**. Mr. Long provided the history of his experience with the “use it or lose it” law as it related to his property in Harper, Kansas. The family had no intention at the time of purchase to utilize the irrigation system. Consequently, the old water driven center pivot system and cleaned up the property. During that time the family “faithfully” filed their reports to the state and had never heard of the “use it or lose it” law. In 2005 they received notice that their water rights were rescinded.

Today, the family would like to use the well and are currently in the process of filing an appeal with the Department of Agriculture to regain their water rights of the property. (Attachment 7)

There being no further conferees, the hearing for **HB2451** was closed.

Chairman Powell opened hearings on **HB2452 concerning wildlife, parks, and tourism; relating to special big game permits.**

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The Committee Chair recognized Kris Kobach, Secretary of State. Mr. Kobach spoke in favor of **HB2452** noting the bill is designed to “fill a gap” for the creation of hunting tags for white-tailed and mule deer in the state of Kansas for the purpose of allowing those wishing to film hunting programs in the state the opportunity to hunt for the purpose of the programming and for the Governor’s use for special guests and dignitaries visiting Kansas.

Chris Tymeson, Legal Counsel, Department of Wildlife and Parks spoke in opposition to **HB2452**, first because it allows for an individual to obtain a permit without following normal application procedures based on their association with the Governor, which is directly contrary to the North American Model of Wildlife Management and the basic tenant that everyone should have equal opportunity to participate in wildlife-related recreation. Second, an individual, with the exception of someone who possesses a Commission permit, can obtain no more than one antlered buck permit. Additionally, nonresidents are not eligible for a firearm (rifle) mule deer permit. Resident hunters must draw for a limited number of rifle mule deer permits. The bill would allow individual exceptions to rule based solely on an association with the Governor, which would invite the perception of political favoritism.

Deer hunting in Kansas is well promoted through outdoor television shows and outdoor publications. The quota of nonresident deer permits, established by statute, is sold out each year, but only after permits leftover from the drawing are issued first come, first served.

The Department of Wildlife and Parks is hesitant to enter into this bill due to the specific rules that are to be followed and past issues with this practice in the 1990s when tags were available for the Governor’s office to give out and issues over to whom the tags were going. (Attachment 8)

There being no further conferees, the hearing for **HB2452** was closed.

Chairman Powell indicated the Committee would work **HB2451** on Friday and possibly **HB2452**.

Chairman Powell called for approval of the minutes for the meetings of January 10-12, 2012. *Representative Williams moved for approval of the minutes as written. Representative Hayzlett seconded the motion. When called to a vote, the motion carried unanimously.*

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Representative Powell opened the floor for bill introductions:

Representative Kerschner submitted a two-page resolution of interstate shipment of state inspected meat. From State Association of Rural Leadership, wanting Congress to reconsider when they authorized interstate shipment of meat the rules that dept of agriculture applied are so stringent that all states must the same as rather than equal to. Same as meaning doing exactly what the USDA says regardless of the fact that you are qualified in a product in a different manner. The idea of states to adopt their own standards, which they are already doing and make so the interstate shipment can take place without the strict guidelines from the USDA.

There being no objection, this request will be introduced as a resolution.

Meeting adjourned at 10:32 a.m.