

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 a.m. on February 10, 2009 in Room 446-N of the Capitol.

All members were present except:  
Steve Morris- excused

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

Conferees appearing before the Committee:  
Allie Devine, Vice President and General Counsel, Kansas Livestock Association (KLA)  
Woody Moses, Kansas Aggregate Producers Association (KAPA)  
Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau (KFB)  
Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture (KDA)

Others attending:  
See attached list.

Chairman Taddiken noted the Committee had received a copy of an article that appeared in the January 27, 2009 issue of *Grass and Grain* about the K-5 Walton Rural Life Center Charter School in Newton (USD 373) which uses technology and agriculture to teach fifth grade students. ([Attachment 1](#))

Chairman Taddiken opened the hearing on **SB 185** - Water rights, nonuse, due and sufficient cause.

Raney Gilliland, Kansas Legislative Research Department, briefed the Committee on **SB 185**. This bill amends a section of the water appropriations act KSA 82a-718. He said the current portion of the law is regarding water rights and their abandonment in terms of due and sufficient cause for abandonment. Mr. Gilliland also said that currently, unless there is due and sufficient cause, the Chief Engineer of the Division of Water Resources (DWR) has the authority to declare a water right abandoned. The new language indicates that any person whose water right was declared abandoned and terminated prior to July 1, 2009 and had supplied the Chief Engineer with adequate information regarding adequate moisture for crop production as a justification for nonuse, could request reconsideration of the abandonment proceeding through the Chief Engineer.

Allie Devine, Vice President and General Counsel, Kansas Livestock Association (KLA), appeared in support of **SB 185** ([Attachment 2](#)). She said the DWR has an internal "adequate moisture analysis" which they use to determine whether adequate moisture existed.

Ms. Devine said that the National Agriculture Statistics Service (NASS) data is not reflective of actual farming practices. It is the understanding of the KLA that prior to 2009, if a particular crop was not reported as an irrigated crop on at least three (3) reports from a particular county to NASS, the crop was not reported by NASS.

Ms. Devine said there are four fundamental flaws in the analysis used by the DWR:

1. statute does not require such analysis of what crops "normally requiring full or partial irrigation within a region of the state"
2. NASS data is not reflective of the actual farming practices of the individual
3. the analysis removes any "judgement" on the behalf of landowners
4. places the burden of proof on the producers to prove that the state's data is faulty when it was never designed for such a purpose

Ms. Devine said that a simple phone call could resolve many of these issues. She also said the regs ought not work against conservation and the judgement of the producers

## CONTINUATION SHEET

Minutes of the Senate Agriculture Committee at 8:30 a.m. on February 10, 2009 in Room 446-N of the Capitol.

The KLA proposed some additional language to **SB 185**.

Ms Devine stood for questions.

Woody Moses Kansas Aggregate Producers Association, presented testimony in support of **SB 185** (Attachment 3). He said that the current water policy promotes use and conservation at the same time. Mr. Moses said one of the issues is who has the “burden of proof” in these cases. Currently the “burden of proof” is placed upon the water right owner as opposed to the one (DWR) who brings the claim.

He also requests the Committee work toward the establishment of a meaningful notification system because it will encourage the DWR to bring necessary abandonment hearings so that water can be made available to other users or to otherwise let the current users use the water and put it to beneficial use.

Mr. Moses stood for questions.

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau (KFB), presented neutral testimony on **SB 185** (Attachment 4). He said that many of the KFB members have the same concerns which were shared by Ms. Devine. He said the issue of adequate moisture needs some clarification and should be addressed. Mr. Swaffar said that **SB 185** as written could jeopardize the effectiveness of K.S.A. 82-718 to remove truly abandoned water rights from use. He said that it would be the intention of the KFB to work with other stakeholders and the agency in attempting to develop a solution which improves the process and makes it more understandable to the public, while at the same time protecting the basic premise upon which the statute was built.

Mr. Swaffar offered to stand for questions.

Contsantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture (KDA), appeared as an opponent to **SB 185** (Attachment 5). He testified that the bill, as written, changes the fundamental principles of the Kansas Water Appropriation Act. He said the Chief Engineer is mandated to manage the state’s water and appropriate its use for the benefit of all Kansans. Mr. Cotsoradis said that under rules and regulations there are 18 separate provisions for due and sufficient cause for nonuse, including sufficient moisture. Current law already allows five consecutive years of nonuse without due and sufficient cause before a water right can be declared abandoned. He also stated that current law requires the KDA to send a notice when three consecutive years of nonuse are accrued and that gives the water right holder a full two years to remedy a nonuse problem. He also said the KDA is committed to working with water right holders to help them prevent inadvertent abandonment of their water rights.

Mr. Cotsoradis stood for questions.

Lane LeTourneau, Program Manager, DWR, KDA, answered questions.

Ms. Devine also responded to questions.

Written testimony in opposition to **SB 185** was filed by Constance Owen, Attorney at Law (Attachment 6).

Chairman Taddiken requested that the conferees find some language to address their concerns with **SB 185** by next Tuesday.

The next meeting is scheduled for February 11, 2009.

The meeting was adjourned at 9:30 a.m.