

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 March 3, 2009, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Mike Corrigan, 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:

Terry Holden, National Director-Government Relations, Kansas Farm Bureau  
John Donley, Assistant General Counsel, Kansas Livestock Association  
Elmer Ronnebaum, General Manager, Kansas Rural Water Association  
Robert Krehbiel, on behalf of the Kansas Independent Oil & Gas Association

Others attending:

See attached list.

Chairman Powell opened the meeting with introduction of Terry Holden, National Director-Government Relations, Kansas Farm Bureau.

**Hearing on:**

**SB 64 - Water appropriation act amendments.**

**Proponents:**

Terry Holden, National Director-Government Relations, Kansas Farm Bureau, (KFB) (Attachment 1) spoke in favor of **SB 64**, stating its membership across the state regularly encounters the Division of Water Resources in matters relative to the application process for and maintenance of water rights. Mr. Holden further documented that the applications that cause KFB great concern 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 believes Section 4 of the bill provides the simple procedural fix to resolve the situation by requiring a showing of legal access or control of the point of diversion and place of use.

John Donley, Assistant General Counsel, Kansas Livestock Association, (KLA) (Attachment 2) spoke in favor of **SB 64**, documenting it is KLA's 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. Mr. Donley further documented that an entity should not have the ability to file for an application for appropriation before having legal access to the land. Section 4 of this bill ensures that parties applying for a water appropriation permit must, at the very least, be up front about the fact that they plan to acquire water from the landowner's property.

**Opponent:**

Elmer Ronnebaum, General Manager, Kansas Rural Water Association, (Attachment 3) presented testimony in opposition of **SB 64**, stating 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. Mr. Ronnebaum further commented that recently, agencies and Kansas Rural Association met with a public wholesale district from southeastern Kansas that presently does not have access to a point of diversion to develop a surface water treatment source, which is one example where **SB 64** could present some unintended consequences.

CONTINUATION SHEET

Minutes of the House Agriculture And Natural Resources Committee at 3:30 p.m. on March 3, 2009, in Room 783 of the Docking State Office Building.

**Neutral:**

Robert Krehbiel, presented neutral testimony on behalf of the Kansas Independent Oil & Gas Association (KIOGA) (Attachment 4), explaining that the KIOGA represents over 1,400 members who engage in the exploration, production, and servicing of oil and natural gas wells throughout the State of Kansas. Mr. Krehbiel further documented that when the bill was amended to include subsection (g) of Section 4, it created some question as to the impact it would have on KIOGA; therefore, they are requesting to develop clarifying language with the Kansas Livestock Association and the Water Division to address this issue.

Questions were asked and comments were made.

Lane Letourneau, Program Manager, Department of Agriculture, also answered questions from member of the Committee.

The hearing was closed on **SB 64**.

The next meeting is scheduled for March 4, 2009.

The meeting was adjourned at 4:05 p.m.



***Kansas Farm Bureau***  
***POLICY STATEMENT***

**House Committee on Agriculture and Natural Resources**

**SB 64**

**Legal Access for Kansas Water Appropriation Permits**

**March 3, 2009**

**Submitted by:**

**Terry Holdren**

**National Director – KFB Government Relations**

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Chairman Powell and members of the House Committee on Agriculture and 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. Senate Bill 64 attempts 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 strong support of the provisions of SB 64 which protect the rights of the underlying landowner in the development of water rights.

Our impressions of the amendments in Sections 1, 2 and 3 of the bill are that they provide clarification and a better restatement of most interpretations of the meaning of current law.

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. It is that violation that we would like to focus on today and to seek your assistance to correct – those concerns are addressed in Section 4 for the bill before you.

The applications that cause us great concern 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.

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Date 3-3-09

Attachment 1

KFB understands and supports the principle that water is owned by the state and that the right to use that natural resource is granted through the water 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. This flexibility is important for users because it allows a tenant to make the application for development of a right on behalf of a landowner. 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 no 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 whether or not the applicant has legal access to the property.

We believe Section 4 of the bill provides the simple procedural fix to resolve this situation by requiring a showing of legal access or control of the point of diversion and place of use. Further, this addition, in our opinion, can be accomplished with little impact on personnel or procedures within the division. In fact, we believe that simple changes to the current application will allow the division to make the appropriate determinations of control without significant new requirements of either the applicant or the division.

Thank you for your consideration of the language before you. We urge your strong support when you work the bill and look forward to working with you to address the needs of water users while protecting the interests of property owners across Kansas.

Thank you.



*Since 1894*

## TESTIMONY

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

From: John Donley, Assistant General Counsel

Date: March 3, 2009

Re: SB 64 – Water Appropriation Act Amendments

*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 Chairman Powell 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 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 64 is a step in the right direction towards, at the very least, notifying a property owner if an entity plans to use eminent domain to acquire a water right. 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.

Section 4 of this bill addresses the concern of at least providing a landowner notice when an entity plans to use eminent domain to acquire a water right associated with the landowner's property. Currently, the Kansas Department of Agriculture holds a water right's priority date as of the date the application is received regardless of the fact that the

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Attachment 2

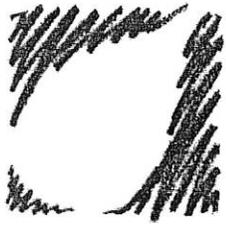
entity making the application has the consent of the landowner or the ownership of the property to apply for such a permit. The proposed changes in section 4 would require that the party applying for the permit would not retain a priority date until such party has the consent of the landowner or a legal interest in the property. Essentially, this provision will require the party applying for the permit to at least let the owner of the land know that they intend to obtain a water appropriation permit from their land. This would allow the true value of the proposed taking to be shown if eminent domain is used to obtain the legal access to the property.

KLA has limited concerns with Sections 1, 2 and 3 in SB 64. These sections appear 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 do not appear to have a drastic effect on current law; therefore, KLA is supportive of the bill in its entirety.

### **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. Section 4 of this bill ensures that parties applying for a water appropriation permit must, at the very least, be up front about the fact that they plan to acquire water from a landowner's property.

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.



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Comments on Senate Bill 64  
Before the House Agriculture and Natural Resources Committee  
March 3, 2009

Chairman Powell and Members of the Committee:

The Kansas Rural Water Association appreciates this opportunity to comment on SB 64. 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 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 rare. The exercise of eminent domain by a public water system would always 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.

Municipal public water suppliers (cities, rural water districts, public wholesale water districts) are concerned about the potential impact of SB 64. 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. Just this past week, agencies and Kansas Rural Water Association met with a public wholesale district from southeastern Kansas that presently does not have access to a point of diversion to develop a surface water treatment source. This is one example where SB 64 could present some unintended consequences. Landowners concerned with the development of a public water system originally pursued this legislative effort in 2008 on the premise that the new system was going to "take away the (landowners') water". However, as you are aware, the water is owned by the state. Kansas Rural Water submits there are already adequate protections in present water rights administration to ensure responsible allocation and protection of landowners' concerns. The permitting process for water rights applications in Kansas is independent of land acquisition for access to any such rights.

The Kansas Rural Water Association respectfully asks that you not support SB 64. Thank you for your consideration.

Respectfully,

Elmer Ronnebaum, General Manager  
Kansas Rural Water Association

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Date 3-3-09  
Attachment 3

TESTIMONY OF ROBERT E. KREHBIEL ON

SB 64

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Mr. Chairman and members of the Committee:

My name is Robert E. Krehbiel, appearing today on behalf of the Kansas Independent Oil & Gas Association in an attempt to understand SB 64. The Kansas Independent Oil & Gas Association represents over 1400 members who engage in the exploration, production, and servicing of oil and natural gas wells throughout the State of Kansas.

On first reading of SB 64 we did not believe the bill would impact oil and gas operations in any way. The bill was amended, however, when the Senate worked the bill to include subsection (g) of Section 4. We understand that this amendment was requested by the Kansas Livestock Association to address a specific problem in Douglas County and was not intended to impact oil and gas operations.

Following several conversations with the Water Resource Division of the Department of Agriculture it seems there is some question among learned people as to the impact of this amendment. The Kansas Livestock Association has advised us that they will certainly work with us to develop clarifying language. We appreciate that very much.

Oil and Gas drilling operations involve the use of heavy and expensive equipment. Drilling operations also require the use of water to function. This use of water requires the operator to obtain a temporary permit from the Water Resource Division. The Division has developed a procedure that can turn these permit requests around in twenty four hours. SB 64 may create delays in that procedure.

Drilling rigs must frequently be redirected due to weather or other various reasons. Delays in obtaining temporary water permits can cost an operator \$400 per hour or \$9600 per day. We would hope to avoid this unnecessary cost due to regulatory delay.

We respectfully request that you allow us to develop clarifying language with the Kansas Livestock Association and the Water Division to address this

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Attachment 4

issue. Thank you very much for your consideration in accepting this testimony at this late hour.

Respectfully submitted,

Robert E. Krehbiel