

MINUTES

**SPECIAL COMMITTEE ON EMINENT DOMAIN IN
CONDEMNATION OF WATER RIGHTS**

November 18-19, 2008
Room 535-N—Statehouse

Members Present

Senator Carolyn McGinn, Chairperson
Representative Dan Johnson, Vice-Chairperson
Senator Marci Francisco
Senator Roger Pine
Representative Rocky Fund
Representative Tom Holland (November 18 only)
Representative Forrest Knox
Representative Tom Moxley
Representative Jerry Williams

Staff

Raney Gilliland, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Mike Heim, Office of the Revisor of Statutes
Kristen Kellems, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees

November 18, 2008

Lane Letourneau, Environmental Scientist, Division of Water Resources
Earl Lewis, Assistant Director, Kansas Water Office
Gregory Shipe, Douglas County Land Owner
John Pendleton, Douglas County Land Owner
Gary Hanson, Attorney, Public Wholesale Water Supply District #25
Mike Werth, Ellis County Land Owner
Toby Dougherty, City Manager, Hays, Kansas
Donald Kirkland, Public Water Assistant Director, City of Wichita
Kevin Mullens, Ritchie Development, Wichita
John Donley, Assistant Counsel, Kansas Livestock Association

Elmer Ronnebaum, Kansas Rural Water Association
Brad Mears, Government Relations Director, Kansas Municipal Utilities

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Robert Parnacott, Assistant Sedgwick County Counselor
Don Moler, Executive Director, Kansas League of Municipalities
Tim Danneberg, Director of Governmental Affairs, City of Olathe
Whitney Damron, Legislative Liaison, City of Topeka
Carl Slaugh, City Administrator, City of Basehor
Brad Smoot, Legislative Counsel, No Annexation Coalition
Alan Cobb, Americans for Prosperity Kansas State Director
Norman C. Pishny, Secy. Treas., No Annexation Coalition
Tom Watson, Citizen
Steven L. Driever, Professor of Geography, UMKC
Representative Ann E. Mah, 53rd District
Vic Miller, Shawnee County Commissioner
Bob Victor, Bob Victor's Manufacture, Topeka
Daniel Stueckemann, Cedar Lakes Estates, Bonner Springs
Brenda LaMar, Johnson County, Kansas

Others Attending

See attached list.

Tuesday, November 18 Morning Session

Chairperson McGinn noted the Committee's charge is to: (1) study the use of eminent domain as it relates to water rights and other issues concerning water rights; and (2) review recent legislative proposals related to local government annexation and study 2008 HB 2747 which deals with unilateral annexation and requiring voter approval.

Vice-Chairperson Johnson noted this is an important issue and there is a need to do it right. Each Committee member introduced themselves by name and district.

Chairperson McGinn called on Kristen Kellems, Office of the Revisor of Statutes, for a brief summary of 2008 SB 559 and Substitute for HB 2860 ([Attachment 1](#)).

Background on Kansas Water Law, Water Districts, and Condemnation in Water and Water Rights

John C. Peck, Professor of Law, University of Kansas School of Law, provided many details on the following topics: (1) an overview of Kansas water law relating to water rights; (2) special water districts; (3) a statement of the problem: over-appropriation of water; (4) an overview of the

law of eminent domain; (5) eminent domain as it relates to Kansas water rights; (6) some issues and ambiguities; and (7) summary (Attachment 2).

Many questions were asked of Professor Peck by the Committee members.

The meeting recessed until 1:30 p.m.

Afternoon Session

Chairperson McGinn opened for discussion on the use of eminent domain as it relates to water rights and other issues concerning water rights. The following participants testified before the Committee.

Lane Letourneau, Division of Water Resources, Kansas Department of Agriculture, explained the method for calculating safe yield for unconfined groundwater aquifers and provided maps on three applications showing the two-mile circle used for calculations (Attachment 3).

Earl Lewis, Assistant Director, Kansas Water Office, explained that the Kansas Water Office has three primary responsibilities related to water supply: development of the state water plan, operation of state-owned storage in federal reservoirs, and the director's role on a water transfer hearing panel. He provided details on how the Kansas Water Office functions in these areas (Attachment 4).

Gregory Shipe, Douglas County land owner, provided details on his experience with the Public Wholesale Water Supply District No. 25. A copy of the case *Shipe v. PWWSD #25* is attached (Attachment 5).

John Pendleton, Douglas County Land Owner, spoke of his problems with the Public Wholesale Water Supply District No. 25.

Gary Hanson, Attorney for Public Wholesale Water Supply District (PWWSD) No. 25, testified that PWWSD No. 25 was formed in order to develop and operate a regional water supply to meet its members' future needs. He enumerated the steps taken by PWWSD No. 25 to develop a ground water supply in the Kansas River Basin east of Lawrence. It is the position of PWWSD No. 25 that it is necessary that it have continued use of eminent domain to acquire water rights if necessary (Attachment 6).

Mike Werth, Ellis County land owner, reported on what the farmers in his area are facing with the City of Hays' use of the power of eminent domain. He set forth several points he would like to have considered in the use of eminent domain by cities (Attachment 7).

Toby Dougherty, City Manager, Hays, Kansas, explained the actions taken in implementing short-term measures to stretch the water resources of Hays and a program for long-term solutions. He urged the Committee to not change the ability of municipalities to use the power of eminent domain (Attachment 8).

Don Kirkland, Assistant Director, Wichita Water Utilities, noted that municipalities are facing considerable unexpected expense because of an unforeseen conflict regarding expansion into Rural Water District service areas. He enumerated potential problems arising from this conflict (Attachment 9).

Kevin Mullens, President, Ritchie Development Corporation, Wichita, discussed the issues they have had involving Rural Water Districts 1 and 5. The RWD had requested compensation in the amount of \$500,000 to release its rights to serve an area owned by Ritchie Development. They are attempting to have the various parties establish a formula for compensation to be used in this specific situation and also for future areas where city water services will replace the RWD ([Attachment 10](#)).

John Donley, Assistant Counsel, Kansas Livestock Association, discussed KLA's position on the use of eminent domain to acquire water rights. He offered suggestions on questions to be addressed and considered if the state elects to allow the use of eminent domain to acquire water rights ([Attachment 11](#)).

Elmer Ronnebaum, General Manager, Kansas Rural Water Association, noted KRWA provides training and technical assistance to various entities. KRWA knows of no public water system that has randomly chosen the use of eminent domain to acquire access to land for installation of public water system improvements or pipelines to connect to those improvements. He cited the actions of public wholesale water districts in using eminent domain ([Attachment 12](#)).

Brad Mears, Director of Operations, Kansas Municipal Utilities, expressed concern about proposals during the last legislative session, limiting eminent domain to water service purposes. He urged caution in limiting the development of water supplies to only be located within a specific service area ([Attachment 13](#)).

Chairperson McGinn asked for questions and discussion after each presentation.

Written testimony was provided by:

- Brad Finkeldei, Shipe's Attorney of record ([Attachment 14](#)); and
- Terry D. Holdren, Kansas Farm Bureau ([Attachment 15](#)).

The Committee recessed until 9:00 a.m. on Wednesday, November 19, 2008.

Wednesday, November 19 Morning Session

Chairperson McGinn called the meeting to order and announced that information will be presented to provide an overview of the bills that occurred in the 2008 Legislature and to provide background on annexation, how it began, and what it looks like today in Kansas. The Committee will probably not be making any decisions yet, but will advise staff on information needed to make recommendations. The Committee has been granted another day to meet and make decisions. A date will be selected as soon as the best date for all the Committee members can be determined.

Staff Overview of Kansas Annexation Laws and 2008 Annexation Legislation

Martha Dorsey, Kansas Legislative Research Department, reported on types of annexation authorized under Kansas law and cited the various statutes covering annexation. Annexation has been addressed in Kansas statutes since 1868. She provided a brief outline of the major changes to annexation law from 1868 to the present. She briefed the Committee on the supplemental note on 2008 HB 2978 and briefly described HB 2747, an act concerning annexation of territory by cities introduced in the 2008 Session. An article from the *State and Local Government Review* (Winter 2001) entitled "Classifying State Approaches to Annexation" provides information on annexation in all 50 states ([Attachment 16](#)).

Background on Annexation and the Law

Robert W. Parnacott, Assistant County Counselor, Sedgwick County, appeared in an individual capacity and not as a representative of the County Commissioners of Sedgwick County. He commented on his observations from eight years of experience with annexation in Kansas. He has been involved with a wide variety of annexation related issues. He discussed island annexations and the aftermath of one case. Unilateral annexations and post annexation hearings were described ([Attachment 17](#)).

Chairperson McGinn called on the following conferees to provide Cities' Perspectives:

Don Moler, Executive Director, Kansas League of Municipalities, discussed the League's opposition to HB 2747. He noted this would make a significant change in public policy and one which should not be taken lightly ([Attachment 18](#)).

Tim Danneberg, Director of Governmental Affairs, City of Olathe, reviewed the history of annexation by the City of Olathe and its experience with unilateral annexation. He also provided a copy of testimony in opposition to HB 2747. A map of Olathe set out the "growth areas" ([Attachment 19](#)).

Whitney Damron, Legislative Liaison, City of Topeka, noted annexation in general allows a city to play for orderly growth to meet the needs of both its citizens and those who are located in close proximity to the city. Limitations on annexation powers of cities will preclude orderly growth and limit a city's ability to provide necessary services to its citizens due to the inability of a city to sustain itself from a shrinking tax base ([Attachment 20](#)).

Carl Slaugh, City Administrator, City of Basehor, reviewed that city's experience with an attempt to annex a large platted subdivision. This annexation would result in an increase in taxes and cost of services ([Attachment 21](#)). Mr. Slaugh answered questions from the Committee on the sewer system and the zoning laws.

Afternoon Session

Brad Smoot, Legislative Counsel, No Annexation Coalition, stressed that KSA 12-521 should be repealed or amended to give voters in the affected rural areas a vote in the decision to be

annexed into a city. The current statutory procedure provides inadequate safeguards, is not strictly followed by the municipalities and counties, and is undemocratic ([Attachment 22](#)).

Alan Cobb, State Director, Americans for Prosperity Kansas, noted that territory growth of a municipality is not economic growth. Government should not be allowed to impose its will without consequence and without any boundaries. There are only four states that allow unilateral annexation with such few protections for property owners – Idaho, Kansas, North Carolina, and Tennessee ([Attachment 23](#)).

Norman C. Pishny, Secretary-Treasurer, No Annexation Coalition, provided background information on the annexation attempt in his community and stressed the impact on the citizens of the area the City of Overland Park was attempting to annex ([Attachment 24](#)).

Tom Watson, Johnson County land owner, said he received notification of the annexation by registered mail from the City of Overland Park. He notified the City Council that there would be an environmental impact on a rookery in that area being considered for annexing if roads were cut through. No communication was allowed for landowners in the process of annexation.

Steven Driever, Professor of Geography, UMKC, recommended an umbrella law which would allow those being annexed to vote on the issue ([Attachment 25](#)).

Representative Ann Mah, 53rd District, spoke in support of a change in the law (KSA 12-520) regarding unilateral annexation. She cited the history of the legislation proposed on this issue for the past 20 years ([Attachment 26](#)).

Vic Miller, Shawnee County Commissioner, noted the Legislature already entrusts county commissions with the responsibility of ratifying certain annexations which include unilateral annexations. He shared his experience of visiting Springfield, Missouri, which had enjoyed phenomenal growth. He was fascinated to learn that no annexations in Missouri can occur without a direct vote of approval by the citizens to be annexed ([Attachment 27](#)).

Bob Victor, Small Manufacturer, Topeka, spoke of his experience with services provided by the City of Topeka (his business is located in Topeka) compared to township-county services (his home is outside of the city limits of Topeka) ([Attachment 28](#)).

Daniel Stueckemann, City of Basehor, Leavenworth County, urged the reintroduction of HB 2747 or a similar bill that fully recognizes homeowner rights and choice. He offered recommendations to consider in drafting a bill to eliminate city involuntary unilateral annexation powers ([Attachment 29](#)).

Brenda LaMar of Johnson County, Kansas, provided a copy of her presentation to the Olathe City Council against annexation on September 16, 2008, and presented maps and information on the area the City of Olathe planned to annex. She urged the Committee to legislate to outlaw forced annexation in Kansas ([Attachment 30](#)).

Written testimony was provided by:

City of Overland Park ([Attachment 31](#));
Senator Anthony Hensley ([Attachment 32](#));
Frank Meade ([Attachment 33](#));
Ed Peck, Treasurer of Tecumseh Township ([Attachment 34](#));
Robert M. Workman, Bonner Springs, KS ([Attachment 35](#));

Peggy Reese, Olathe (Attachment 36);
Terry Holdren, Kansas Farm Bureau (Attachment 37); and
Dennis F. Schwartz, General Manager, Shawnee County, RWD #8 (Attachment 38).

The Chairperson announced this concluded the conferees' testimony. Chairperson McGinn asked each Committee member what direction they would offer to the staff so that recommendations could be prepared for consideration at the one day meeting to be scheduled.

Directions offered:

- Need a service plan for county commissioners;
- Review time period;
- Need a report on how the road amendment is working;
- Review 521 statute 14 points;
- Need for water to annex 21 acres or more at one time;
- Information needed on what other states are doing in this area besides the four states that were named;
- How do other states protect property owners rights;
- Limit strip annexing and check if there are any requirements that strips cannot be annexed;
- Committee needs to decide whether a bill should be drawn or if we want to continue as is;
- Representative Mah offered to collect information on laws in other states on annexing over 21 acres;
- Where two cities file for annexation of the same area, order needs to be established in terms of review;
- Need step by step procedure in obtaining water and eminent domain would be the last resort; and
- Look at boundaries for wholesale water supply dealers.

Chairperson McGinn will be checking with the Committee for a date most suitable for their attendance and set the date for a meeting to consider recommendations on the issue of annexation.

Prepared by Ann McMorris
Edited by Athena Andaya

Approved by Committee on:

January 5, 2009
(Date)