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H.B. 2312, 2017 Leg., Reg. Sess. (Kan. 2017)

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will initiate a two-week investigation during which the parties will have the opportunity to submit relevant information. The bill requires the investigation to be completed within a year of the date the complaint was received. The Chief Engineer may extend the investigation for good cause and notify the parties of the additional time needed. While the investigation is ongoing, the parties may petition the Chief Engineer to issue a temporary order to prevent, limit, or curtail the impairment.

The House amended SB 46 to define many of the terms in the bill. However, a conference committee created to reach a final version for both houses removed these amendments. The bill was approved by former Governor Samuel Brownback on April 18, 2017.

Liz Trower

H.B. 2312, 2017 Leg., Reg. Sess. (Kan. 2017) (concerning (i) codification and clarification of the administrative procedures for appealing orders or inactions of the Chief Engineer of the Division of Water Resources; and (ii) the classification of such appeal to fall under the Kansas Administrative Procedure Act).

House Bill 2312 (“HB 2312”) came before the Kansas 2017 Regular Legislative Session to clarify and codify the administrative procedures for aggrieved water users to appeal orders or inactions of the Chief Engineer of the Division of Water Resources (“DWR”) of the Department of Agriculture. The House Committee on Water and Environment sponsored the bill, and the legislature passed the original version with no changes, amendments, or opposition. Former Governor Sam Brownback approved the bill on April 7, 2017 and it took effect on July 1, 2017.

Before passage of HB 2312, water users aggrieved by orders or inaction of the chief engineer had two paths for appeal. The first option was to appeal directly to the Chief Engineer for review of the order. The rules and regulations of the DWR provided this option, but it had no statutory backing. This review consisted of an evidentiary administrative hearing. The second option was to appeal to the Secretary of Agriculture, as provided by state statute. This option did not entail an evidentiary hearing.

There were two problems with this dual scheme. First, it was unclear whether aggrieved users should appeal to the Chief Engineer—as provided by the DWR rules and regulations—or to the Secretary—as provided by statute. Either option was available to the water users. Second, for those users who first requested review by the Secretary, rather than the Chief Engineer, there was no evidentiary record for the Secretary to review to aid the decision-making. Thus, in those cases, the secretary would refer the matter back to the Chief Engineer to create a record through an evidentiary hearing. Once the Chief Engineer had held the evidentiary hearing, the Chief Engineer would then send the record to the Secretary for review and decision.

HB 2312 clarified and streamlined the administrative process for water users choosing to appeal an order or inaction of the Chief Engineer. The bill provides that, when users aggrieved by orders issued or any inaction by the Chief Engineer wish to appeal such order or inaction, the initial appeal is made directly to the Chief Engineer. The user must make this appeal within fifteen

days of the issuance of the order or the Chief Engineer's failure to act. This initial appeal to the Chief Engineer would now fall under the Kansas Administrative Procedure Act. After the Chief Engineer submits his decision, the user can then choose to appeal to the Secretary within thirty days of issuance of the order. This amendment removes the confusion about where the user should appeal first, as well as ensuring there will be a record available if the water user does appeal to the Secretary. The amendment retains the opportunity of the aggrieved user, after review and decision by the Secretary, to appeal to the district court under the Kansas Judicial Review Act.

HB 2312 neither adds nor removes any due process rights for the aggrieved water user. Rather, it clarifies and streamlines the process by codifying the existing process of appealing to the Chief Engineer and specifying the order of steps in the appeals process. Aggrieved water users can now confidently enter the appeals process without concern over where to appeal first. Additionally, the bill eliminated needless delay resulting from lack of an evidentiary record upon appeal to the Secretary.

Kathleen Arsenault

H.B. 2080, 2017 Leg., Reg. Sess. (Kan. 2017) (providing for the reinstatement of forfeited benefit units in rural water districts).

Kansas House Bill 2080 ("HB 2080") addresses when rural water districts must reinstate forfeited benefit units. A benefit unit is a property right that entitles a landowner to receive water service in a rural water district. Although an infrequent occurrence, a benefit unit may be forfeited after six months of non-payment to the rural water district.

HB 2080 amends Kansas statute 82a-621 to provide for the reinstatement of forfeited benefit units. The bill allows a landowner with a forfeited benefit unit to regain their benefit unit by paying the rural water district all unpaid fees and charges, including any fees and charges that have accrued since the date of forfeiture. The bill restricts the amount of these reinstatement fees to not more than twenty percent of the district's current new benefit unit fee. The statute does not apply to forfeitures other than delinquent payment, such as a voluntary forfeiture of a benefit unit.

The Committee on Water and Environment introduced HB 2080 on January 18, 2017. On February 23, 2017, the House passed the first version in a vote of 112 to 13. The Senate passed the final version in a vote of forty to zero on March 23, 2017. Former Governor Brownback approved and signed the bill on April 18, 2017. The bill passed with relative ease because there was no vocal opposition to it.

The bill originates from series of lawsuits filed on behalf of landowners who bought land in rural water districts only to discover that, because title searchers and realtors do not check the status of the benefit units, the benefit units had been forfeited as a result of non-payment or abandonment. In many cases, had the landowner known about the cost of a benefit unit replacement fee (typically \$4,000), he or she would have negotiated for a reduced price because land in rural Kansas is useless without the right to water service.

Gary Hanson, representing the Kansas Rural Water Association, explained that the statute, as it stood before this bill, did not equip stakeholders with a fair