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## H.B. 2080, 2017 Leg., Reg. Sess. (Kan. 2017)

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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

opportunity to resolve a property's delinquent payments. During foreclosure proceedings, which sometimes last up to twelve months, the bank as successor in interest is unlikely to make water payments and the rural water district commences shutting down water service. It depends on the individual rural water district's policies, but there are two ways to stop water service to a benefit unit. The first option is to keep the benefit unit meter in place but restrict access with a padlock. The other is to remove the meter completely, which imposes a new meter cost on the next landowner. Therefore, properties can carry with them significant monetary burdens in order to regain water service.

HB 2080 recognizes and mitigates the financial consequences of defaulted water service payments in rural water districts. Hanson noted that any long-term defaults on monthly fees significantly affect rural water districts. These districts are usually run by volunteers and are low on funds, leaving them fragile and debt-ridden. Thus, the board of rural water districts have the important task of incentivizing water users to pay their water bills on time. Without this statutory change, however, it was possible for rural water district boards to abuse their discretion and supplement their income with replacement fees from new landowners. Now, rural water districts cannot charge landowners more than twenty percent of the current cost for the new water unit. Essentially, the bill helps address this issue because it imposes a cap on the amount that rural water districts can charge landowners for new benefit units.

The bill addresses the infrequent but very real financial burden that forfeited benefit units can cause for both landowners and rural water district boards. HB 2080 alleviates these burdens by ensuring that once a landowner pays all water back fees to the rural water district then the cost for the new benefit unit cannot exceed twenty percent of the current price of a benefit unit. Therefore, in effect, HB 2080 saves landowners thousands of dollars. In addition, rural water districts can recover some of their losses from forfeited benefit units and restore water service to the defaulted land.

*Camille Agnello*

## NORTH CAROLINA

**S.B. 107, S.L. 2017-145, Reg. Sess. 2017 (N.C. 2017)** (easing the requirements for the removal of low-hazard dams).

North Carolina Senate Bill 107 ("SB 107") seeks to streamline dam removal in the state by expediting the removal process under certain conditions. There are roughly 6,250 dams in North Carolina, many of which no longer serve their original purposes—such as powering mills or creating now-obsolete water storage. In addition to changing the removal process, the bill requires the North Carolina Department of Environmental Quality and the Department of Public Safety to study the dam removal process to recommend changes to "reduce regulatory barriers to obsolete dam removal and consolidate permit processes." It must then submit this report to the Environmental Review Commission by March 1, 2020. Many supporters of SB 107 championed its passage for a variety of reasons: to no longer keep fish from their habitat; to remove the public safety hazards posed by old dams; to stop the increased threat of upstream flooding; and to open dammed areas up to recreation based economic growth. The primary sponsors of this bill were State Senators Andy Wells,