

**Testimony in Support of HB 2312 to
the Senate Agriculture and Natural Resources Committee
by Lane Letourneau, Water Appropriation Program Manager
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Good morning, Chairman Kerschen and members of the Committee. I am Lane Letourneau and I serve as the Water Appropriation Program Manager at the Kansas Department of Agriculture (KDA). I appreciate the opportunity to provide testimony in support of House Bill 2312.

House Bill 2312 would amend portions of existing statutes concerning certain fertilizer and water orders issued by KDA, most of which involve compliance. In summary, the proposed amendments clarify the procedures for administrative appeals and make such appeal procedures fall under the Kansas Administrative Procedure Act (KAPA).

Amendments Concerning Fertilizer Orders

Proposed amendments to K.S.A. 2016 Supp. 2-1201b

- Existing section 2-1201b concerns the assessment of civil penalties against persons who violate the fertilizer laws of Article 12, Chapter 2 of the Kansas Statutes Annotated and the related rules and regulations.
- The proposed amendments would make such penalty orders subject to an administrative hearing under KAPA. The existing statute does not invoke KAPA and so currently, such penalty orders are only subject to judicial review in accordance with the Kansas Judicial Review Act.

Proposed amendments to K.S.A. 2016 Supp. 2-1201c

- Existing section 2-1201c concerns ammonium nitrate dealers.
- The existing statute already invokes KAPA and provides that the denial, suspension, or revocation of each ammonium nitrate dealer registration is subject to an administrative hearing under KAPA. The proposed amendment, however, uses better language to make it clear that a KAPA hearing is only available if timely and properly requested.

Proposed amendments to K.S.A. 2016 Supp. 2-1208a

- Existing section 2-1208a concerns commercial fertilizers that are in violation of various fertilizer laws.
- The existing statute already invokes KAPA and provides that any cancellation by the Secretary of Agriculture of the registration of a brand of commercial fertilizer is subject to an administrative hearing

under KAPA. The proposed amendments, however, use better language to make it clear that a KAPA hearing is only available if timely and properly requested.

Amendments Concerning Water Orders

- The Kansas Water Appropriation Act (KWAA) and its related rules and regulations require the chief engineer of the Division of Water Resources (DWR), or his designee, to make numerous decisions based on facts and law and then to issue an order concerning a water right. Oftentimes, such orders involve approving changes to, dismissing, or obtaining compliance regarding the water right.
- Generally, the proposed amendments to sections 82a-737 and 82a-1901* are not intended to materially change the administrative due process that KDA currently affords those affected by certain water orders. Rather, the proposed amendments are designed to clarify the administrative appeal process. This is done by consolidating the authority and procedures for administrative appeals and by bringing uniformity to the process through the application of KAPA.
- Currently, there are two paths of administrative appeal for certain water orders issued by the chief engineer or his designee. A person affected by one of those orders can choose to administratively appeal the order under either or both paths:
 - 1) Review of the order by the chief engineer or his designee, in the form of an evidentiary, administrative hearing. This hearing is authorized by and conducted pursuant to DWR's existing regulations, primarily K.A.R. 5-14-3 and 5-14-3a.
 - 2) Review of the order by the Secretary of Agriculture or by a presiding officer from the Office of Administrative Hearings. This review does not involve an evidentiary hearing, is authorized by existing 82a-1901, and is conducted pursuant to KAPA.
- The proposed amendments to sections 82a-737 and 82a-1901 generally preserve that existing due process while consolidating and clarifying the process:
 - The proposed amendments to section 82a-1901 effectively codify in new subsections (a) and (b) the opportunity for an administrative hearing (path 1, above) currently afforded under K.A.R. 5-14-3, while adopting the hearing procedures of KAPA instead of those enumerated in K.A.R. 5-14-3a.
 - The proposed amendments to section 82a-1901 effectively retain in new subsection (c) the opportunity for secretarial review (path 2, above) under KAPA that currently is afforded by the existing statute.
- The proposed amendments to section 82a-737 are needed to clean up existing references to 82a-1901 and to ensure that a uniform administrative appeals process is applied to various water compliance orders.

In conclusion, KDA supports HB 2312, a bill that would bring more clarity and uniformity to the administrative appeal process of certain fertilizer and water orders.

Thank you for the opportunity to present testimony. I will stand for questions at the appropriate time.

*Existing sections 82a-737 and 82a-1901 involve the administrative appeal process for the following certain water orders issued by the chief engineer or his designee:

- Order regarding proposed irrigation district (K.S.A. 42-703);
- Order regarding dissolution of irrigation district (K.S.A. 42-722, 42-722a);
- Order regarding application for change of place of use or point of diversion (K.S.A. 82a-708b);
- Order regarding application for permit to appropriate water (K.S.A. 82a-711);
- Order regarding abandonment and termination of water right (K.S.A. 82a-718);
- Order regarding Intensive Groundwater Use Control Area (IGUCA) (K.S.A. 2016 Supp. 82a-1038);
- Order regarding Local Enhanced Management Areas (LEMA) (K.S.A. 2016 Supp. 82a-1041);
- Order imposing civil penalties or other sanctions for violation of the KWAA or related rules and regulations (K.S.A. 2016 Supp. 82a-737); and
- Order suspending use of water for violation of the Kansas Water Banking Act (K.S.A. 2016 Supp. 82a-770).
- The failure of the chief engineer to timely issue a certification of appropriation is also subject to the administrative appeal process of existing section 82a-1901 (K.S.A. 82a-714).