

AGRICULTURE COMMITTEE: 56TH ASSEMBLY SESSION

MINUTES OF MARCH 16, 1971,

MEMBERS PRESENT: CHAIRMAN: Virgil Getto, Norman Glaser, Roy Young
Frances Hawkins, Roy Torvinen.The first order of business before the committee was AB 261:

AB 261: Provides rules, regulations, and enforcement for denoting price per unit of weight, measure, or count on all commodities in package form.

COMMITTEE DISCUSSION: Mr. Getto read Mr. Galloways testimony on the above bill.

COMMITTEE DECISION: Mr. Getto entertained a motion to delete subsection 4 of section 4 and subsection(c) of section 5

Mr. Young moved to amend and Do Pass, seconded, motion carried.

AB 452: ALLOWS GRACE PERIOD, AFTER NOTICE , IN WHICH TO USE UNDERGROUND WATER BENEFICIALLY IN ORDER TO PREVENT LOSS OF WATER RIGHT.

Assemblyman Hafen gave testimony on the above bill.

This bill came to my attention through the State Soil Conservation districts resolutions. There is a problem in our area too since this has been brought up. What it says basically is, that if you fail to use beneficially, water, whether it is certificated or any other stage for a five year period the State Engineer can't send you a notice by registered or certified mail if your rights are cancelled. And, the only appeal you have is the 30 day appeal, that is, within 30 days you can take it to District Court. Now in a lot of cases I think it would be extremely difficult to get any relief from District Court. The point of the bill, I think, is for the State Engineer to give warning, not arguing so much the fact that he shouldn't have that authority I think he should, but you can be caught napping and you get a notice and; at this point Mr. Hafen gave an example of this; In Diamond Valley where they have been forced to plant something to prove up on their water. They are not financially able then to continue that, so they spend the money to get their certificated in water rights, and then they let it set idle, and gradually develop until they get to it, but, the danger here is the fact

that there is no warning. Unless you really understand this law, which I doubt that the average citizen does, and he just gets a letter that he is cancelled, otherwise, he might have been in the process planning, toward planning, or to get something going. I can't see that the 30 day appeal to District Court does him much good, or that it would give him much relief. So that is why I was proposing that he first be given notice and in time do something with it or lose it.

Down in our area, agriculture is at the bottom of the priority list and the people at the top. So people who buy these 10 acre parcels for example, are the very people that are going to get hurt by this and yet it's more people use than it is farm use on that small parcel. I would just like to see something worked out where they get a warning, that's all. And, a reasonable length of time to do something.

Miss Hawkins: Isn't 5 years a reasonable length of time?

Mr. Hafen: Well, here's the situation, you have a piece of land that has the water rights certificated on it,

Miss Hawkins: what you are doing here, is giving them seven years plus the field time to tie up that water.

Mr. Hafen: After non use, that's true.

Miss Hawkins: This what the engineer objected to, and what you are objecting to is that they don't get the notice and I agree with you from that standpoint. But isn't it better to provide, that they would be officially notified that they have one more year to go on this, also that if anybody buying that property, that they are notified by the owner what the water rights are and what the termination is.

Mr. Hafen: I think that would work as an alternative

Miss Hawkins: I kind of agree with Roland, this is a long time to tie up water rights,

Mr. Getto: What did you suggest Frances.

Miss Hawkins: On the fourth year the people would be notified that they have one more year to prove that water right or lose it. Or anyone new buying that property would be notified of what the rights, the water rights are, in writing by the person selling him the property.

Mr. Getto: Let me ask you a question, Tim, say that the first party has the application for four years, then he sells it, does the new party get five more years, or do they only have one more year to prove it?

Mr. Hafen: Not generally.

Mr. Getto: Well can he.

Mr. Hafen: Well he could. But what I am talking mainly about

stuff that is already certificated. The guy has spent thousands of dollars farming the land, putting it to use, drilling his well, his irrigation system, he has put it to use, he has his certificate, which is the final right, now for some reason he quits farming or if he sells it and the people that buy it do not farm on it then, if during the five year period that hasn't been used beneficially the state engineer just sends him notice and boom that's it. The 30 day appeal right does not provide any protection in my estimation, because you've got to go to District Court to reverse this decision, and on what basis are you going to do this? Now if it had been farmed sometime during the five year period, yes, I think you could go to Court and get his decision reversed. But let's assume you weren't aware of this, I wasn't

Mr. Getto: About Frances' suggestion, that four years being notified and then two years, that would give you one more year.

Mr. Hafen: Well that could be done

Miss Hawkins: You don't have a limitation on your identification here either, it says two years after notice, if he wanted to work it that way, the way your law says he could notify them in three years and they've got their two years notice, and you would end up with a five anyway.

Mr. Hafen: I would think that subsection one would cover that now maybe it does in failure for 5 successive years on the part of a holder of any right, whether it is adjudicated or not, or permitted right.

Miss Hawkins: All you said here is that he is registered and certified, and he may be in danger of forfeiture, you could say well, this period of time you are in danger of forfeiture two years from now if you don't get it in.

Mr. Torvenin: I move that Miss Hawkins draft an amendment to this bill. Miss Hawkins is to work with Mr. Hafen.
seconded, motion carried to amend AB 452:

Mr. Hafen: What I would prefer, time wise, if you don't like the two years, I would prefer the five years plus one, because I prefer the longer time. Now if that isn't acceptable to you, then I will accept yours. This was enacted in 1967 so that on July 1, 1972 would be the earliest, I think probably actually send out notices. So what we are doing by making it four years is July 1, this year he could start sending out notices, and this can upset some things, some people are aware of the law.

AB 453: Summary: GIVES STATE ENGINEER DISCRETION IN CANCELING PERMITS TO APPROPRIATE PUBLIC WATER.

Mr. Hafen: 453 came about, I have a court decision here, this has happened not only in this case, but several times, Bode I think has had one or two cases, What happens is, that the state engineer sends you notice that you must file a proof of beneficial use on such and such a date, so you are aware of it then, when that date terminates, let's assume it's September 1, you still have a 30 day grace period in order to file your proof

these are quite complicated things, it requires a licensed state engineer to do this, in the case I am referring to, the owner's agent that flubbed up, but in other cases it was the state water rights surveyor that flubbed up, so what happened was the 30 day grace period expired and this fellow had been into the state engineer's office and reviewed all the permits, but that one he overlooked, and the thing expired and the day after it expired he got notice from the state water rights engineer that it had been cancelled, so he immediately drove to Las Vegas, and got in there before they closed that afternoon, he was one day late, but according to law there wasn't anything that could be done about it. Now, this was his oversight, it was his fault, not the state engineer's; but this Court decision by Judge Mann, says that the law is rigid; and as long as the state engineer has mailed his notices then it shall be cancelled.

Mr. Glaser: It must put the state engineer under a great deal of pressure to keep extending it out.

Mr. Hafen: It could.

Mr. Torvinen: I would rather see it add on to line #10, that the permit is cancelled subject to an appeal to the state engineer, which has to be filed within 10 days or something like this.

Mr. Hafen: That's the whole thrust of the bill to make it permissive rather than rigid. Now I talked to Roland about this and he doesn't like this, he would prefer that the law say what is suppose to do.

Mr. Torvinen: By changing it to may, Everyone of them, if they are going to ask him not to do it, I would think by adding on to there an appeal from this cancellation, not the general field provision, which I guess is elsewhere in the water rights. Say that the order cancelling the water may be appealed by filing an appeal within 10 days and the State Engineer with good cause may may resind the order on cancellation.

Mr. Hafen: Roland would have put this back, in fact he is sympathetic to the case, in fact he agreed not to buck the case heavily, But the Judge said the law is so structured that there no alternative.

Miss Hawkins: Why did he cancel the permit when it says that he has the power, that if in his judgment the holder is not proceeding in good faith .

Mr. Torvinen: Well he sends them a notice and in six months and if they don't have an answer to the notice that's a presumption of not good faith.

Mr. Hafen: The law says that the State Engineer has no discretion after the 30 days, he has to cancell the permit.

Mr. Getto: Are you suggesting an amendment to the bill Roy?

Mr. Hafen: You might have a good point

Mr. Glaser: I think it is a worthwhile to amend it. I can see where the State Engineer would not be happy with this bill, where he has to make the decision all the time

Mr. Getto: I will entertain a motion.

Mr. Glaser: I so move that Roy Torvinen go down to the bill drafter's office and get an amendment along the lines we just discussed, seconded, motion carried.

AMENDMENT: Change shall to may and that a cancellation of the water permit may be appealed by filing an appeal within 10 days.

AB 706: Hold on this bill until Thursday March 18.

AB 676: Hold on this bill until Thursday March 18.

AB 436: Creates Brand Inspection Division in State Department of Agriculture.

Mr. Getto: Remember Mr. Burge's argument, if we took the brands, that is now a bureau under the division of animal science, his argument was, that if we set it over as a division by itself that we couldn't justify it. I have researched other department. And, the department of health has a division of alcoholism that has two people in it. There are many, many divisions that are that small, so I think his arguments are null and void.

AB 697: Permits certain retail stores to sell milk less than prevailing price; a hearing will be set for this bill. Contact Eileen Brookman and Bill Hicks.

Meeting adjourned at the hour of 12:00 noon.

b.smithers