

MINUTES

JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY

November 13, 2012
Room 152-S—Statehouse

Members Present

Representative Forrest Knox, Chairperson
Senator Carolyn McGinn, Vice-chairperson
Senator Marci Francisco
Senator Ralph Ostmeyer
Senator Mike Petersen
Senator Mark Taddiken
Representative Dennis Hedke
Representative Mitch Holmes
Representative Annie Kuether
Representative Tom Sloan
Representative Vince Wetta

Staff Present

Cindy Lash, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Abigail Boudewyns, Kansas Legislative Research Department
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Gary Deeter, Committee Secretary

Conferees

Lane Letourneau, Water Appropriation Program Manager, Division of Water Resources,
Kansas Department of Agriculture
Burke Griggs, Counsel, Division of Water Resources, Kansas Department of Agriculture
Chris Grunewald, Assistant Attorney General, Kansas Attorney General's Office
Tom Stiles, Chief, Watershed Planning, Monitoring, and Assessment Section, Kansas
Department of Health and Environment
Tracy Streeter, Executive Director, Kansas Water Office
Earl Lewis, Assistant Director, Kansas Water Office
Wayne Penrod, Executive Director—Environment, Sunflower Electric Power Corporation
Brad Loveless, Director of Environment and Conservation Programs, Westar Energy
Paul Ling, Director, Corporate Compliance, Kansas City Power and Light

Others Attending

See attached sheet.

Morning Session

The Chairperson called the meeting to order at 10:06 a.m., welcomed members, and noted the absence of Representative Carl Holmes, who lost his bid for re-election. Expressing appreciation for Representative Holmes' long service for the people of Kansas, the Chairperson praised him as a uniquely knowledgeable member of the House Utilities Committee. The Chairperson also welcomed Representative Hedke as a new member of the Joint Committee.

The Chairperson welcomed conferee Lane Letourneau, Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture, who commented on non-perfected groundwater rights in closed areas (Attachment 1). He noted the Committee's request referring to "use it or lose it" with respect to water right abandonment in closed areas was satisfactorily addressed by a change in state law. He said the Committee's question deals with a tangential issue: not fully perfecting a quantity when developing a water right. He stated a person cannot lose what they never had. He listed the process for developing a water right, commenting that the water right is quantified in the certificate of appropriation issued by the Chief Engineer at the completion of the perfection period. He listed the number of water rights without certificates in closed areas, concluding that his office does not consider any of these to be a problem.

Burke Griggs, Legal Counsel, Division of Water Resources, Kansas Department of Agriculture, reviewed the status of the Republican River litigation. Referencing the beginning of a Republican River Compact in 1943 between Colorado, Nebraska, and Kansas and Nebraska's compliance failure in the 1960s, he said the lawsuit filed by Kansas in 1998 resulted in a legal victory for Kansas. The court found that groundwater is included in the Compact and issued a document stipulating a final settlement, accounting procedures to quantify the settlement, and a computer groundwater model. During 2007 to 2009, arbitration eventually led to a two-week trial in August 2012, before the U.S. Supreme Court. A decision for Kansas could include up to five forms of relief: a finding of contempt, monetary damages, a permanent reduction in the basin's irrigated acreage, sanctions in the event of future noncompliance, and the appointment of a River Master to oversee the settlement.

Regarding Colorado's non-compliance, Mr. Griggs stated instead of reducing water usage, Colorado is constructing a pipeline on the North Fork of the Republican River and is draining Bonney Reservoir on the South Fork. Mr. Griggs praised the Kansas Attorney General's Office and the Division of Water Resources for their effective pursuit of the issue.

Mr. Griggs and Chris Grunewald, Assistant Attorney General, Kansas Attorney General's Office, responded to members' questions:

- Colorado has submitted a plan to address water usage; Nebraska has not.
- Kansas would prefer that damages be assessed against Nebraska's gains rather than Kansas' losses.
- Getting a River Master to oversee the settlement is unlikely.
- Colorado's decision to build a pipeline takes advantage of accounting procedures more than it results in reduction of water usage.

- Nebraska does not regulate groundwater, making it much more difficult to quantify damages.
- Draining the Bonney Reservoir will have negligible effect on the Ogallala aquifer.
- At present the Attorney General's Office and the Department of Agriculture have no recommendations for statutory changes.

Abigail Boudewyns, Fiscal Analyst, Kansas Legislative Research Department (KLRD), presented information regarding the State Water Plan Fund, which was created by the 1989 Legislature (Attachment 2). She itemized the revenue sources as follows:

- Water protection fees (\$0.03 per 1,000 gallons of water) assessed on public water supply systems' retail sales, industrial water usage, and stockwater usage;
- Fees imposed on fertilizer and pesticides;
- Sand royalty receipts (\$0.15 per ton of sand sold);
- Pollution fines levied by the Kansas Department of Health and Environment;
- Clean water drinking fee (an additional \$0.03 per 1,000 gallons of retail water sold by a public water supply system);
- A statutory State General Fund (SGF) annual transfer of \$6.0 million; and
- A statutory annual transfer of \$2.0 million from the Economic Development Initiatives Fund (EDIF).

Ms. Boudewyns stated expenditures from the State Water Plan Fund are based on priorities set by the State Water Plan. She included a listing of the Fund receipts (Attachment 3).

Tom Stiles, Chief, Watershed Planning, Monitoring, and Assessment Section, Kansas Department of Health and Environment (KDHE), and Tracy Streeter, Executive Director, Kansas Water Office (KWO), presented information regarding algae blooms and nutrient management.

Mr. Stiles explained that KDHE is developing a process to respond to algae blooms that impair Kansas reservoirs, displace desirable aquatic life, and interfere with water supplies (Attachment 4). Noting that most Kansas water flows into reservoirs, he said excessive nutrients (nitrogen and phosphorus) cause the algae blooms and the agency is working with the KWO to develop an eight-part plan to reduce the magnitude of nutrient flow, with special focus on reservoirs that provide drinking water.

Mr. Streeter continued with the report on algae blooms, stating restoring the \$6.0 million demand transfer from the SGF, adding a nutrient-sediment component to the Conservation Reserve Enhancement Program (CREP), and supplemental funding to implement Watershed Restoration and Protection Strategies (WRAPS) will provide a foundation for nutrient and

sediment reduction in Kansas reservoirs ([Attachment 5](#)). WRAPS produces an excellent return-on-investment, and he urged the legislators to follow the agency's recommendations for the coming fiscal year.

Members posed several questions for Mr. Stiles and Mr. Streeter. They responded as follows:

- The EPA sought to reduce nutrient flow in Florida and created confusion by insisting on quantifiable numbers for reducing nutrients, an unworkable approach.
- Most of the nutrient problems originate within the state.
- It might be helpful if the state could acquire reservoir storage authority rather than having authority rest with the U.S. Army Corps of Engineers.

Mr. Streeter updated the Committee on the 2012 drought and current conditions. He said all 105 Kansas counties are under a drought emergency. He noted the drought is less severe than in 1934, but is more severe than in 1954. Currently, there is less than 50 percent of storage capacity in reservoirs, and the conservation pool has been significantly reduced. He commented on emergency and surplus water supplies and noted that 197 public water systems are in conservation stages and 103 KWO customers are in conservation mode. Regarding the future, he stated all forecasts are based on worst-case scenarios.

Mr. Letourneau provided additional information on drought conditions listing the Minimum Desirable Streamflow (MDS) for all Kansas rivers and commenting on the Multi-Year Flex Accounts, which allow water right holders to obtain a five-year permit that temporarily replaces their water right. A member commented that one of the disadvantages of the flex accounts is that a senior water-right holder loses his or her senior status by signing up for the flex account. Mr. Letourneau added that if the MDS comes into effect, the water-right holder is limited to the base amount. Another member expressed concern about water quality if the drought continues.

Afternoon Session

Earl Lewis, Assistant Director, KWO, explained that Mary Knapp, State Climatologist from Kansas State University, was unable to attend, and he summarized her report by saying drought conditions are still severe and an additional nine inches of precipitation are needed to bring conditions back to normal ([Attachments 6 and 7](#)).

Mr. Lewis then reported on Kansas water supply issues ([Attachment 8](#)). He reviewed the development of the water supply program and commented on the relationship between demand and water storage; he noted the demand in the Neosho Basin has already reached a critical stage where demand exceeds supply during extended droughts. He explained that, for most river basins, it is less expensive for the KWO to pay the fixed-rate interest to the federal government rather than purchase the water storage through bond payment options. Answering questions, Mr. Lewis replied that by deferring calling additional water supply into service and beginning payments, the principal increases each year, creating an unfunded liability. He gave examples from Milford and Perry reservoirs, noting purchasing water supply covered by the

state's contract with the U.S. Army Corps of Engineers would cost \$17.4 million and \$17.3 million, respectively, if the principal and accrued interest were paid as a lump sum in 2013. He also noted that last year the Kansas Development Finance Authority evaluated the option of bonding to purchase the contract, but determined that, due to program revenue limitations, the expected interest rate on a bond purchase would be higher than what is accrued with the U.S. Army Corps of Engineers contract.

Wayne Penrod, Executive Director—Environment, Sunflower Electric Power Corporation, presented information on the effect of water levels on power production. He stated all water usage is determined by a power plant's original specifications. He cited the Garden City plant, which uses 50 times more water than what is being used in the newer Holcomb plant. He explained that, if cooling towers are used to meet new EPA regulations, water usage and therefore, costs, increase. He said the general rule is 500 gallons of water per MWH (Megawatt Hour).

Brad Loveless, Director of Environment and Conservation Programs, Westar Energy, addressed the same issue ([Attachment 9](#)). He corroborated the 500-gallons-per-MWH for coal-fired plants, but added that the scrubbers installed in one cooling tower at Jeffery Energy Center uses an additional one billion gallons annually. He noted that the water usage at the nuclear facility (Wolf Creek) uses a 5,000-acre cooling lake and is dependent on supplemental water from the John Redmond Reservoir. Although Wolf Creek seeks to purchase its additional water supply during periods of low demand, most years, annual water usage runs upwards of one billion gallons. A member asked for gallons-per-MWH used at Wolf Creek. This information was provided later in the day by Mark Schreiber, Westar Energy: Wolf Creek uses 400 gallons per MWH; coal-fired plants use 300 gallons per MWH; and gas-fired plants use 100 gallons per MWH. Cooling towers double or triple water usage.

Paul Ling, Director, Corporate Compliance, Kansas City Power and Light, reported on the effects of the drought on the company's power generation. He said the company pumped 92 continuous days during the summer from the Marais des Cygnes River to keep LaCygne Lake filled. At Melvern and Pomona lakes, the company exhausted its allotment of industrial storage, which required the purchase of water from the reserve pool at higher rates. Answering questions, Mr. Ling replied saying the company has no cooling towers; the company is waiting for the final EPA regulations to be published; the company has adequate pumping capacity, but needs additional storage; and increased water usage for cooling towers adds slightly more cost to electrical generation.

Mr. Streeter returned to offer KWO recommendations to meet future water-supply needs:

- Increase by two feet the pool level at John Redmond Reservoir, action which includes a dredging plan;
- Continue watershed activities to reduce sedimentation;
- Complete the Reservoir Roadmap for all river basins;
- Continue implementation of 2011 legislation for the Kanopolis Reservoir, which will add 7,500 acre-feet; and

- Continue exploring additional revenue sources.

Mr. Streeter responded to members' questions with the following:

- The KWO could consider adding a sustainability fee when customers are rolled into a variable-rate contract.
- No-till agricultural practices may reduce sedimentation in some areas, but more often sedimentation occurs from bank erosion.
- The agency will explore ways to market sediment dredging deposits.

Ms. Boudewyns returned to outline alternative funding mechanisms for the State Water Plan Fund ([Attachment 10](#)). She listed seven states that fund water resources from a variety of sources, such as a real-estate transfer tax (Illinois), lottery proceeds (Minnesota), a fraction of the sales tax (Missouri, Iowa, Texas), and bonding authority (Wisconsin). A member suggested, if dredging is considered infrastructure, ELARF (Expanded Lottery Act Revenue Fund) allocation might be considered for additional revenue.

Members discussed the day's presentations and offered comments. Among them were the following:

- The Kansas Water Authority and the Conservation Division of the KDA should be allowed greater flexibility in the use of funds for stream bank stabilization.
- The recent statutory establishment of the multi-year flex accounts (KDA Division of Water Resources) needs to be amended so that a senior water right holder does not lose that status by signing up for a flex account.
 - In discussing the wider issue of flex accounts, a member referenced the regulation ([KAR5-16-7](#)).
 - Mr. Letourneau explained that when a certain level of MDS is reached, the flex account is suspended and the base right becomes the governing authority for water usage.
- The Legislature needs to take water issues more seriously and fully fund the KWO programs.
 - A member noted that current water receipts are lower than any time since 1991.
 - Another member recommended bonding rather than paying interest to the U.S. Army Corps of Engineers for water storage.
- Two members requested more information about the cost of water storage and what policies govern the future use of water storage.
- Referencing the Kansas Department of Wildlife, Parks and Tourism's (KDWPT) long-term leases with the U.S. Army Corps of Engineers, a member suggested

that if the state were to take over the Corps' recreation areas, this might provide a source of revenue for dredging.

- Further, Secretary Jennison (KDWPT) might be willing to have certain recreational activities augment the State Water Plan Fund.
- A member suggested using the GIS (Geographical Information Systems) mapping to show sedimentation before making remediation investments.
- A member suggested that where water access is limited, the Dakota Aquifer might be treated to make its water more usable.

The meeting was adjourned 4:12 p.m. The next meeting was scheduled for November 19 and 20 at the State Capitol.

Prepared by Gary Deeter
Edited by Heather O'Hara and Cindy Lash

Approved by the Committee on:

March 25, 2013

(Date)