

PRELIMINARY MINUTES

SPECIAL COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Thursday, October 22, 2015  
Room 548-S, Statehouse

**Members Present:**

Representative Sharon Schwartz, Chair  
Senator Garrett Love, Vice-Chair  
Senator Marci Francisco  
Senator Larry Powell  
Representative Jack Thimesch  
Representative Ponka-We Victors  
Representative Troy Waymaster

**Members Absent:**

None

**Staff Present:**

Joanna Wochner, Kansas Legislative Research Department  
Heather O'Hara, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Mark Skoglund, Kansas Legislative Research Department  
Mark Savoy, Kansas Legislative Research Department  
Natalie Scott, Office of the Revisor of Statutes  
David Wiese, Office of the Revisor of Statutes  
Gary Deeter, Committee Secretary

**Conferees appearing before the Committee:**

Lane Letourneau, Director, Division of Water Resources, Kansas Department of Agriculture  
Robert Large, Chief Legal Counsel, Kansas Department of Agriculture  
Mark Rude, Executive Director, Southwest Kansas Groundwater Management District No. 3  
Susan Metzger, Assistant Secretary, Kansas Department of Agriculture  
Jeff Vogel, Program Manager, Plant Protection and Weed Control Division, Kansas Department of Agriculture  
Leslie Kaufman, Kansas Cooperative Council and Kansas Agribusiness Retailers Association  
Rob Andrews, Director, Gray County Noxious Weeds Department  
Kenny Baccus, Vice-President, County Weed Directors Association of Kansas

**Others Attending:**

See attached sheet.

**Morning Session**  
**Thursday, November 22, 2015**

The Chair called the meeting to order at 9:04 a.m. She requested that members and staff introduce themselves and then welcomed Staff Joanna Wochner, who outlined the water issues expressed in 2015 HB2245, a bill which deals with Division of Water Resources' administrative hearings regarding water impairment disputes. She also noted the agenda's afternoon topic regarding 2015 SB134, which proposes changes and efficiencies for Kansas' noxious weed law.

Lane Letourneau, Director, Division of Water Resources, Kansas Department of Agriculture (KDA), introduced Robert Large, Chief Legal Counsel, KDA, who outlined the relevant statutes addressing current practices related to water impairment (Attachment 1). He explained the water-rights process, which gives primary status to the "first-in-time-first-in-line" holder of a water right. He provided statutory details addressing various water-right claims; he noted that two parallel avenues are open to a claimant: an administrative hearing through the KDA or a hearing in district court. He stated that legislative tools such as a LEMA (Local Enhanced Management Area) allow local areas to address variances such as non-contiguous wells, making possible a resolution when no administrative action is currently available. He commented that certain administrative rules (KAR 5-4-1 and KAR 4-1a) regulate impairment investigations when disputes arise between users.

Mr. Letourneau responded to members' questions:

- The statutes allow the Chief Engineer to be moderator between parties during a court case.
- Kansas regulates not only groundwater, but surface water (Minimum Desirable Streamflow) as well.
- Both well spacing and recharge rates are considered to determine impairment.

A member requested follow-up information regarding water regulations in neighboring states.

Staff Natalie Scott briefed the Committee on the additions to the Kansas Water Act detailed in 2015 HB224; the bill is currently in the House Agriculture and Natural Resources Committee (Attachment 2).

Representative Don Hineman, who introduced the bill, explained that the intent of the proposed legislation is to clarify the process for resolving water disputes. Answering a

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question, Mr. Letourneau replied that the bill does not expand the authority of the Chief Engineer.

Mr. Large commented further on the bill, saying that two parallel processes are open to resolve a water dispute: file a claim with the Chief Engineer, or file a lawsuit with the district court. Answering a question, he replied that the bill adds further steps for the Chief Engineer to follow, including approval by the pertinent groundwater district.

Mark Rude, Executive Director, Southwest Kansas Groundwater Management District No. 3, outlined three concerns regarding the impairment process (Attachment 3):

- The court views Kansas statutes and regulations differently—specifically, ignoring the regulatory definition of impairment.
- There is no mandatory notification process to alert those affected by an impairment dispute.
- The Chief Engineer's report allows any opinion to be included.

Mr. Rude also expressed concern regarding the economic impact of diminishing water resources in southwest Kansas by the year 2065.

Susan Metzger, Assistant Secretary, KDA, updated the Committee on the Governor's Vision for the Future of Water Supply in Kansas (Attachment 4). She stated that 70% of the action items outlined in the Vision are being implemented; two items are current priorities: creation of the Governor's Water Resources Subcabinet, and the establishment of a Blue-Ribbon Task Force to address financing for water-related activities. She also noted two policy changes implemented during 2015: allowing carryover of unused allocations in Multi-Year Flex Accounts, and development of Water Conservation Areas, the latter allowing water-right owner(s) to develop water conservation measures to extend the life of the Ogallala aquifer (Attachment 5).

Ms. Metzger also expressed the concern of the agency for the increase in well-diversion applications, which may increase the risk for aquifer decline and impairment of nearby wells (Attachment 6). She said that the agency is seeking input from various stakeholders regarding civil penalties for exceeding authorized water use and civil fines for failing to submit annual water reports. The KDA is also considering authority to seal water meters. Answering questions, Mr. Letourneau replied that, of the 32,000 water-rights owners, about 100 fail to file a report. He said that telemetric meters cost \$1500 per installation and a minimum monthly charge of \$40.

## Afternoon Session

Ms. Wochner provided a brief history of the Kansas noxious weed program, which began in 1895; she then referenced current legislation (2015 SB134), which removes the Kansas Noxious Weed Act from statute and places it into regulation (Attachment 7).

Staff David Wiese provided details for SB134, identifying the amendments to the current noxious weed law and the addition of five new sections (Attachment 8). Selected items:

- The bill establishes state noxious weed advisory committee.
- It sunsets the current statutory list of noxious weeds and requires the Secretary of the KDA to adopt rules and regulations to declare specific plants as noxious weeds.
- It places responsibility for enforcement of the act with county commissioners.
- It increases fines for violations.

Chad Bontrager, Deputy Secretary, KDA, commented on the positive changes proposed by SB134 (Attachment 9). He identified three areas in which the proposed bill would improve the Kansas Noxious Weed Act:

- The eleven-member advisory committee will provide a range of representation so that the Secretary can make science-based decisions regarding noxious weeds. Placing the noxious weed list in regulation will give the Secretary more flexibility for controlling noxious weeds.
- The bill will streamline administration of the law.
- The bill updates the noxious weed law to accommodate the above changes.

Responding to a question, Mr. Letourneau replied that the state budget for addressing noxious weeds is less than \$1 million.

Jeff Vogel, Program Manager, Plant Protection and Weed Control Division, KDA, offered a detailed explanation of each section of the bill (Attachment 10). Answering questions, Mr. Vogel replied that, although the county is given more flexibility, there are certain limits placed on the county which require the county commissioners to consult with the KDA Secretary. Recommended control measures for noxious weeds include mechanical as well as chemical methods.

Leslie Kaufman, Kansas Cooperative Council and Kansas Agribusiness Retailers Association, presented information in support of SB134; she especially noted the value of moving noxious weed control into rules and regulations (Attachment 11). She also proposed an amendment to the bill to include a member of the advisory committee to be appointed by the Kansas Cooperative Council.

Rob Andrews, Director, Gray County Noxious Weeds Department, testified in support of the section of SB134 that gave more latitude to the county; however, he expressed concern for the section that gave authority to the KDA Secretary. He noted that doing

so shifted authority from the legislative to the executive branch. He recommended prioritizing weed control by separating weeds into three tiers: the first priority to weeds recognized as dangerous but not yet present in Kansas; second, weeds with limited presence in Kansas; and, lowest priority, current noxious weeds in the state.

Kenny Baccus, Vice-President, County Weed Directors Association of Kansas, spoke in favor of the bill, especially noting the creating of the advisory committee and the flexibility granted to counties (Attachment 12).

The Chair recognized Kent Askren, Director of Public Policy, Kansas Farm Bureau, who alerted the Committee to notification issues related to water meter violations. Stating that water-rights owners are required to report their water use annually, he stated that the lag time between evaluating the reports and notifying owners of violations places some owners under an unfair liability. An owner may unintentionally overuse water one year, but not be notified of the violation until a year later, causing an owner unwittingly a second violation. A member requested Mr. Askren bring the issue to the attention of the legislature in January.

The Chair noted written testimony from six individuals or groups, the first two in support of HB2245, the following four recommending that Old World Bluestem be included in the list of noxious weeds:

- Representative Russell Jennings, District 122, Attachment 13;
- Kirk Heger, President, Southwest Kansas Irrigation Association, Attachment 14;
- Brian Obermeyer, Landscape Programs Manager, The Nature Conservancy, Attachment 15;
- Margy Stewart, Manager, Bird Runner Ranch, Attachment 16;
- William Browning, Flint Hills rancher, Attachment 17;
- Larry R. Patton, President, Protect the Flint Hills, Attachment 18.

The Chair invited members to make Committee recommendations to the 2016 legislature, to which members suggested:

- Evaluation and notification of water use violations must be done in a timely manner.
- The possibility of more effective reporting of water use through telemetric water meters should be explored.
- Notifications regarding the drilling of new water wells should be mandatory.
- Regarding water impairment, the two processes to adjudicate disputes should be sequential rather than parallel.
- Noxious weed control measures should include input from the Kansas Department of Health and Environment in order to identify possible deleterious environmental consequences resulting from various weed control actions.

The meeting was adjourned at 3:08 p.m. No further meeting was scheduled.

Prepared by Gary Deeter  
Edited by Joanna Wochner and Heather  
O'Hara

Approved by the Committee on:

\_\_\_\_\_

(Date)



# GUEST LIST

## JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: October 22, 2015

NAME	REPRESENTING
Dan Murray	DDM
JOHN BOTTEMBERG	KPA
SEAN MILLER	CAPITOL STRATEGIES
ORREN FERIL	GMD #5
Kirk Hegger	SWKITA GMD #3
ROB MEALY	KENNARDY + ASSOC.
MARK RUDE	SW KS GMD3
David Brown	Ka Water Congress
John A. Donley	KFB / KCGA
John W. Smith, Jr.	RETIRED
Josh Roe	KDA
Robert Large	KDA
JAKE PRICE	Rancher
Ron Sueder	KGFA / KARA
Kent Astren	KFB
Randall Allen	Ks. Assn. of Counties
Don Hinerman	118 <sup>th</sup> Dist.
Pat Vogelsberg	SWKITA

# GUEST LIST

## JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: October 22, 2015

PAGE 2

NAME	REPRESENTING
Darci Meese	Water On
Mingui Harper	KWO
ZACK PISTORA	KS SIERRA CLUB
Jeff Vose	KS Dept. of Ag.
Scott Marsh	KS Dept of Ag
Kimberly Slaty	KRMU
Jay Burman	CWDAK
Jenny Burman	C.W.D.A.K.
Dennis Peterson	CWDAK
Leslie Kaufman	Ks Cooperative Council
Chad Bontroyer	WDA
Carol McDowell	Tallgrass Ranchers
Mike Beam	KS LUSTK ASSN
Rob Andrews	Self-
Eric Smith	LKM

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Jackie McClaskey, Secretary

Governor Sam Brownback

**Testimony on Water Issues to  
2015 Special Committee on Agriculture and Natural Resources  
By Lane Letourneau, Program Manager, Water Appropriation,  
and Robert Large, Chief Legal Counsel,  
Kansas Department of Agriculture  
October 22, 2015**

This morning we will be providing an informational overview of current practices related to impairment investigations, general information other DWR administrative proceedings, and the requirements for appointment of the Chief Engineer.

Impairment investigations

*Administrative process:*

Currently, the Kansas Water Appropriation Act contains some very thoughtful statutes related to the protection of private property rights on a first in time first in right basis. The Act provides two paths to our citizens to protect their water rights. One path is an administrative path and the other path allows a water right holder to go directly to district court. The system is set up so that the most senior person will have right to the available water first and gain the most economic benefit by using a very limited resource. It is important to know that having a water right does not guarantee water will be available to divert.

K.S.A 82a-707 provides that the date of priority of every water right of every kind, and not the purpose of use, determines the right to divert water at any time when the supply is not sufficient to satisfy all water rights.

K.S.A. 82a-706b(a) makes it unlawful to divert waters of this state from moving to a person having a prior right to that water, and provides that the chief engineer, upon making a determination of unlawful diversion, shall, as necessary, secure water for the senior user. This applies to both groundwater and surface water. To secure water, the Chief Engineer may direct that any diversion works may be opened, closed, adjusted or otherwise regulated, essentially curtailing the diversion of water by a junior user. The Chief Engineer or the Chief Engineer's authorized agents will deliver a copy of such a directive to the persons involved either personally or by mail or by attaching the notice to the diversion works, and this directive is considered legal notice to all persons associated with that point of diversion. See K.S.A. 82a-706b(b).

K.A.R. 5-4-1 and 5-4-1a are the DWR regulations regarding impairment investigations when we are required to implement the administrative path. K.A.R. 5-4-1 applies to distribution of water between users when a prior right is being impaired. A complaint may be submitted in writing to the Chief Engineer, after which an investigation regarding the physical conditions involved is conducted. The law allows a reasonable raising and lowering of the water table. Part of our investigation includes determining whether there is a

working point of diversion, the need for the water, and that any well is fully utilizing the aquifer. This section provides an opportunity for participation in the investigation by the groundwater management district where the water right is situated, and provides that any data acquired during the investigation is provided to the complainant throughout the investigation process.

Upon completion of the investigation, the Chief Engineer prepares a report stating the relevant findings, and the initial report is posted on the department's website. If the initial report shows impairment, potentially affected parties have an opportunity to submit written comments. Additionally, the report is provided to the groundwater management district where the right is situated, for their review and comment. Following review of the comments, the chief engineer will issue a final report.

Based on the final report, if the complainant desires the Chief Engineer to regulate water rights found to be impairing the complainant's right, the user may submit a request to secure water on a form provided by DWR. If within a GMD, and if the report finds that impairment is substantially due to direct interference, the GMD board may recommend how to regulate the impairing rights to satisfy the impaired right. The Chief Engineer will give a written notice and directive to the water users whose rights must be curtailed in order to satisfy the senior user.

K.A.R. 5-4-1a comes into play if the impairment is being caused by a regional lowering of the water table, as opposed to direct interference. The same process for investigation of the impairment is followed in these cases. If the area of complaint is within a GMD, the GMD board will recommend steps to satisfy senior users, which can include following the management program, amending the management program, or other means. These recommendations are submitted to the Chief Engineer in writing within six months of the determination that impairment is caused by a regional lowering of the water table, or a longer time if extended by the Chief Engineer. If outside a GMD, the Chief Engineer will conduct a study to determine the appropriate course of action, balancing the effectiveness vs. economic impact of any corrective measures.

A couple of quick examples of water rights administration are:

(1) Minimum Desirable Streamflow established in 1984 by KSA 82a-703. We treat this like a surface water right with a 1984 priority with a flow protected to a USGS stream gage. During years of low-flows we administer approximately 350 water rights that are junior to MDS.

(2) Gooch/Mills. These rights are in Stevens County, deep Ogallala aquifer, close to one mile apart, with 400 feet of saturated thickness. These wells touch one another when fully operating simultaneously. There is enough water available to both parties, just not at the same time. Based on pump tests and analysis, we were able to determine a water level that if the junior water maintains a pumping level above, the senior water right will not be impaired. Thus, with some management both wells can operate.

(3) Kolbeck. This case is in Ford County, south of Dodge City. The senior right is a domestic right very concerned they are losing two feet of aquifer per year. They filed an impairment complaint on the juniors in the area. Our pump test did not show direct well to well impact, therefore we could not find impairment.

## *District Court Proceedings*

In lieu of proceeding under a K.A.R. 5-4-1 investigation of impairment, a water user may pursue injunctive relief under statutory provisions designed to protect users with a prior right. K.S.A. 82a-716 and 82a-717a afford a senior water right holder the right to seek injunctive relief, and in some cases monetary damages in district court to protect his or her prior right against a junior water right holder. Senior water right holders are not required to first seek a remedy from the Chief Engineer. However, the district court has the authority pursuant to K.S.A. 82a-725 to order DWR or the Chief Engineer to act as a "referee" in such a matter, whereby the court directs DWR to investigate and report on any or all physical facts involved. The report is provided to the parties to the litigation for an opportunity to file objections to the report. The report and objections filed serve as evidence of the physical facts.

### Other DWR administrative proceedings

K.S.A. 82a-1901, first enacted in 1999, provides the framework for review of orders of the Chief Engineer. Subsection (a) provides that orders issued pursuant to certain sections of the water appropriation act and the groundwater management district act are subject to review by the Secretary of Agriculture. Following an administrative hearing conducted by an independent hearing officer, a Respondent, or DWR, may petition the Secretary for review of the hearing officer's decision. The Secretary generally may deny the review if there does not appear to be a basis for review, may issue an order modifying the hearing officer's order, or may remand the matter for further proceedings. The Secretary's order upon review may be appealed to district court pursuant to the Kansas judicial review act.

K.A.R. 5-14-10 is the DWR regulation that establishes categories of violations under the water appropriation act, for example, falsifying water use reports, overpumping and meter tampering, . The regulation provides that civil penalties may be assessed. In addition, the statutes and regulations provide for temporary suspensions or reductions of water rights.

In all enforcement cases, the case begins with an investigation by the DWR field office for the region where a water right or permit is situated. If there are violations found, in many cases a notice of noncompliance issued. For violations that are repeated or would trigger an immediate penalty, the matter is referred the DWR compliance and enforcement unit at the headquarters office in Manhattan. This unit will prepare a draft order that is reviewed for legality by an attorney prior to issuance. After issuance, the 15/30 day clock begins to run for requesting a hearing.

In all cases, an opportunity for an informal settlement conference is provided to the Respondent. The purpose of these settlement conferences is to answer questions and have a back and forth exchange regarding the violations and any corrective actions. This model of offering settlement conferences has been successful in improving the level of compliance of water users who have faced violations. In many cases, DWR will agree to reduce or modify a penalty based on mitigating factors or as an acknowledgement of corrective measures undertaken by water users. It is very important to know that we do not have very many hearings related to non-compliance. During 2015, DWR has had one hearing related to non-compliance. Another hearing was held regarding the denial of a new application. A large number of settlement conferences have been held, most of which resulted in a mutually acceptable settlement option. These settlement conferences are conducted either in person or by phone. We work very hard to accommodate our water users in this process.

## Appointment of the Chief Engineer

The Chief Engineer is appointed by the Secretary of Agriculture pursuant to K.S.A. 74-506d. The Chief Engineer is the Chief Administrative Officer of the Division of Water Resources. Employees of DWR are designated as classified employees pursuant to that section. The current Chief Engineer is a classified employee. The qualifications of the Chief Engineer are currently defined in the class specifications for the position of Chief Engineer under the state civil service classifications.

With the passage of HB 2391 during the 2015 legislative session, which allows appointment of an unclassified employee in the event of a vacancy in a classified position, it is the current plan of the agency that unclassified employees will fill such vacancies.

Thank you for the opportunity to speak with you today and for your continued support of Kansas water users.

**HOUSE BILL No. 2245**

By Committee on Federal and State Affairs

2-5

1 AN ACT concerning water; relating to the water appropriation act;  
2 groundwater; procedure; amending K.S.A. 82a-717a and 82a-725 and  
3 repealing the existing sections.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 82a-717a is hereby amended to read as follows:  
7 82a-717a. (a) No common-law claimant without a vested right, or other  
8 person without a vested right, a prior appropriation right, or an earlier  
9 permit shall divert or threaten to divert water if such diversion or  
10 threatened diversion impairs or would impair any vested right,  
11 appropriation right, or right under a permit to appropriate water. But any  
12 common-law claimant with a vested right, or other person with a vested  
13 right, a prior appropriation right, or an earlier permit may divert water in  
14 accordance with any such right or permit although such diversion or use  
15 thereunder conflicts with the diversion, use, proposed diversion, or  
16 proposed use made or proposed by a common-law claimant who does not  
17 have a vested right, or other person who does not have a vested right, a  
18 prior appropriation right or an earlier permit. Moreover, any common-law  
19 claimant with a vested right, or other person with a vested right, a prior  
20 appropriation right, or an earlier permit may restrain or enjoin in any court  
21 of competent jurisdiction any diversion or proposed diversion that impairs  
22 or would impair such right in the event that any such diversion or proposed  
23 diversion is made or is threatened to be made by any common-law  
24 claimant, or other person who does not have a vested right, a prior  
25 appropriation right, or an earlier permit.

26 (b) *In cases involving groundwater, no party shall receive a*  
27 *temporary injunction when the later in time water right is being exercised*  
28 *within the requirements of the division of water resources of the Kansas*  
29 *department of agriculture approved water right. For purposes of this*  
30 *section, within the requirements of the division of water resources of the*  
31 *Kansas department of agriculture shall mean that the party is operating*  
32 *the water right:*

- 33 (1) *At an approved point of diversion;*  
34 (2) *for an approved use;*  
35 (3) *within the maximum flow rate; and*  
36 (4) *within the approved quantity.*

1     *A party seeking a temporary injunction shall bear the burden of proof*  
2 *to show that the party to be enjoined has violated the provisions of this*  
3 *subsection.*

4     *(c) In cases involving groundwater, no party shall receive a*  
5 *permanent injunction until such party proves, through the expert testimony*  
6 *and report of a licensed well driller, professional engineer or licensed*  
7 *geologist that:*

8         *(1) The well and pump system is operating properly and fully*  
9 *penetrates the aquifer; and*

10         *(2) the party has exhausted all reasonable economic means to satisfy*  
11 *the party's water right prior to seeking injunctive relief.*

12     *(d) In cases involving groundwater, no party shall receive a*  
13 *permanent injunction where the primary cause of the impairment is an*  
14 *overall lowering of the static water level. For purposes of this section, it*  
15 *shall be presumed, in accordance with K.S.A. 60-413 and 60-414, and*  
16 *amendments thereto, that the primary cause of the impairment is an*  
17 *overall lowering of the static water level when the static water level has*  
18 *fallen more than 50 feet since the first-in-time water right was perfected.*

19     *(e) Nothing in subsection (d) shall prohibit the division of water*  
20 *resources of the Kansas department of agriculture from administering the*  
21 *water rights in Kansas.*

22     *(f) For purposes of this section, "impairs" or "impairment" means the*  
23 *unreasonable raising or lowering of the static water level, the*  
24 *unreasonable increase or decrease of the streamflow, or the unreasonable*  
25 *deterioration of the water quality at the water user's point of diversion,*  
26 *beyond a reasonable economic limit.*

27     Sec. 2. K.S.A. 82a-725 is hereby amended to read as follows: 82a-  
28 725. *(a) In any suit to which the state is not a proper party brought in any*  
29 *court of competent jurisdiction in this state for determination of rights to*  
30 *water, the court may order a reference to the division of water resources or*  
31 *its chief engineer, ~~as referee,~~ for investigation of and report upon any or all*  
32 *of the physical facts involved and the division or its chief engineer shall*  
33 *thereupon make such an investigation and report as ordered by the court.*  
34 *The court shall make detailed findings and orders regarding the authority*  
35 *of the chief engineer, which shall include the provisions in subsection (b).*  
36 *The report shall set forth such findings of fact ~~as may be required by,~~ in*  
37 *numbered paragraph form and shall comply with the court's order of*  
38 *reference and may contain such opinions upon the facts as it deems proper*  
39 *in view of the issues submitted. In cases involving groundwater lying in*  
40 *the confines of a groundwater management district, the chief engineer*  
41 *shall consult with and receive the approval of such groundwater*  
42 *management district regarding both the findings and opinions set forth in*  
43 *the report. Before filing its report with the court, the division or its chief*



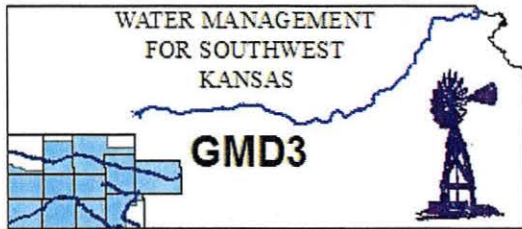
1 engineer shall mail notice of its report together with a copy of it, to the  
2 parties or their attorneys of record.

3 Within ~~thirty (30)~~ days from the date of the mailing of the copy of the  
4 report, any party may file objections to it with the division of water  
5 resources or its chief engineer. ~~After~~ The division, or its chief engineer, ~~has~~  
6 ~~considered~~ shall consider and expressly rule upon the objections, ~~it~~. The  
7 division of water resources of the Kansas department of agriculture shall  
8 file its report, ~~as referee~~, with the clerk of the court and give notice by  
9 registered or certified mail of the filing of its report to the parties or their  
10 attorneys. The court shall review the report upon exceptions thereto filed  
11 with the clerk of the court within ~~thirty (30)~~ days after date of mailing  
12 registered notice of the filing of the report. Except in its discretion or for  
13 good cause shown, the court shall not consider any exception to the report  
14 unless it appears that the excepting party presented the matter of the  
15 exception to the division or its chief engineer in the form of an objection.  
16 ~~The report shall be~~ After a hearing to determine the admissibility of the  
17 report, pursuant to the rules of evidence, the report may be received in  
18 evidence of the physical facts found therein, but the court shall hear such  
19 evidence as may be offered by any party to rebut the report or the  
20 evidence. If suit is brought in a federal court for determination of rights to  
21 water within, or partially within, the state, the division or its chief engineer  
22 may accept a reference of such suit as master or referee for the court.

23 (b) In cases involving groundwater, all appointments as referee and  
24 all reports of the division or the chief engineer shall comply with K.S.A.  
25 82a-717a, and amendments thereto. The report or testimony of persons  
26 making the report is not admissible in evidence without proper foundation  
27 testimony to admit an expert witness report or testimony pursuant to the  
28 rules of evidence. The report of the division or the chief engineer shall not  
29 alter or amend existing findings, conclusions or final orders of the division  
30 or the chief engineer. When making a report, nothing in this section shall  
31 permit the division, the chief engineer or the court to alter, amend, change  
32 or modify any existing water right or appropriation right.

33 Sec. 3. K.S.A. 82a-717a and 82a-725 are hereby repealed.

34 Sec. 4. This act shall take effect and be in force from and after its  
35 publication in the statute book.



**Southwest Kansas**  
**Groundwater Management District No. 3**  
**2009 E. Spruce Street**  
**Garden City, Kansas 67846**  
(620) 275-7147 phone (620) 275-1431 fax  
www.gmd3.org

**Testimony on HB 2245 and other comments**  
**To**  
**2015 Special Committee on Agriculture and Natural Resources**  
**By Mark Rude, Executive Director**  
**Southwest Kansas Groundwater Management District No. 3**  
**October 22, 2015**

Chairwoman Schwartz, vice chairman Love and members of the committee, thank you for this opportunity to testify in support of HB 2245 and to provide additional comments on Kansas water resources.

HB2245 intends to provide important assurance that groundwater rights mean the same today as when they were granted under administrative due process. Consistent treatment of property rights administratively and judicially is of utmost importance for property values and investment confidence in the access and management of the water resources of Kansas.

We are concerned for state actions that affect neighboring property owners without formal posting or notice. We are also very concerned that the water policies of the legislature might allow for one standard of water right impairment administratively between application review and response to complaints, while a different standard for impairment may be applied by the courts. This appears to be a difference between the legislative policy for the impair question regarding water right applications review (K.S.A. 82a-708a and b), and the lack of a definition in 82a-717a or 82a-725. This is becoming highly problematic in GMD3. Especially knowing the definition of impairment is one where smart minds can and do differ in interpretation.

I have attached a map area in Finney County for reference of two impairment complaints in close proximity, along with a map of non-blue townships that are depleting at a faster rate than 40% in 25 years; a standard used for many years in GMD3 to determine water available for new appropriations.

There is concern for a "cobra effect" being realized from water right impairment claims in long standing groundwater decline areas. We don't believe the policy of the legislature was intended to have two different definitions in the quasi-judicial process of the chief engineer issuing water rights and change approvals and then a different strict

definition for investigating administrative complaints and court directed fact finding and opinions of water right impairment. The result is a house of cards stacked under calm conditions, but ready to fall apart completely under a different condition.

Accordingly, we request that the provisions of HB 2245 be considered and supported to avoid a significant amount of policy confusion within state agencies, the courts, and to avoid the application process of pay the fee, no guarantee, and good luck in court, where the real review occurs under different water policy standards that may not adequately consider the public interests.

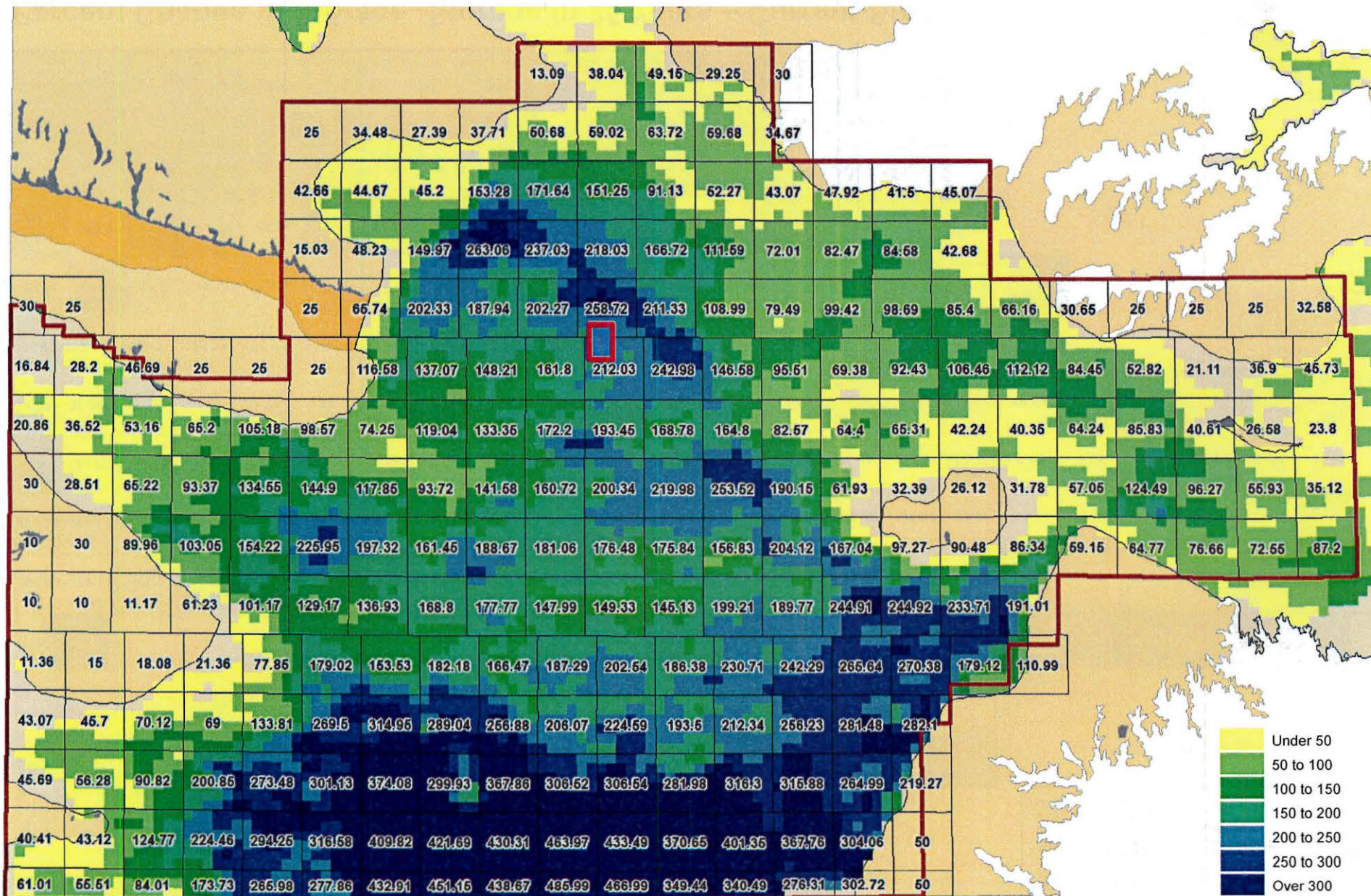
We also suggest, under rights for due process, the state pursue a public notice website to post agency received applications and actions to assist the public in gaining knowledge of water rights and the administrative actions of the state that may affect them or their community.

[http://apps.wrd.state.or.us/apps/misc/wrd\\_notice\\_view/default.aspx?notice\\_id=21](http://apps.wrd.state.or.us/apps/misc/wrd_notice_view/default.aspx?notice_id=21)

From Department of Administration Property Valuation Division information, Finney County, in GMD3, has lost over 33,000 acres of irrigated land transitioned to dry land agriculture. Most of this was by necessity as the aquifer diminished to well yield less than 100 GPM. A recently completed study of areas in Kansas looked at the economic values tied to water use in 2012 and for a calendar year in 50 years. This was done to estimate Kansas losses in economic value and jobs if water needs are not met. I have copies of the draft study document available today. Southwest Kansas alone, may see a one year loss in Kansas economic value of \$10.4 Billion. It also found a statewide loss of \$18.3 Billion, all expressed in 2015 dollars. The value of Kansas water preserved for access by Kansans, either through direct diversion, or through water transportation infrastructure development, is why the Kansas Aqueduct Project and the fix to the house of cards issue of HB 2245 is so important to the future of our state.

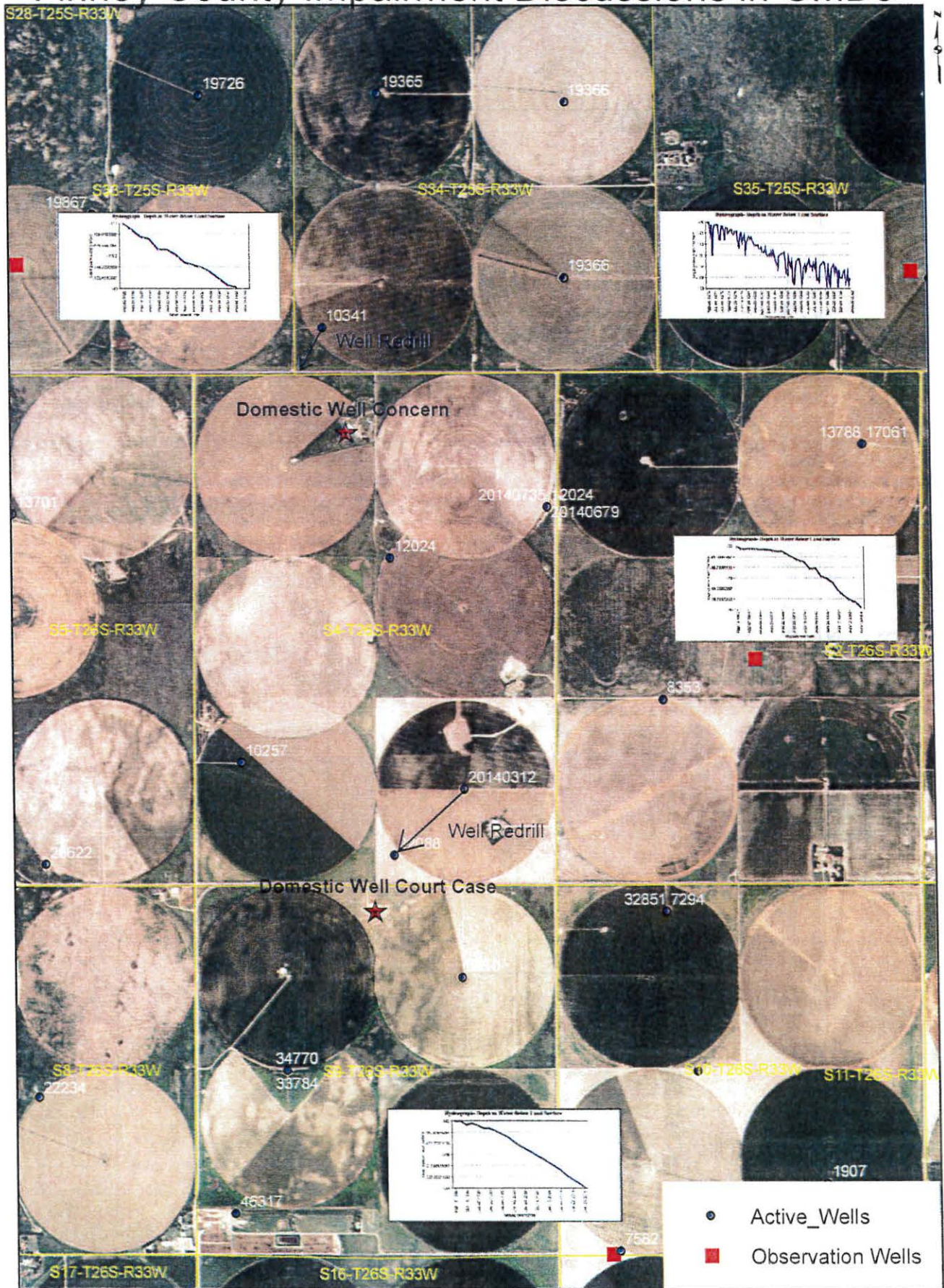
Thank you again for this opportunity to Testify and I will stand for questions at the appropriate time.





Saturated Thickness in Feet, 2012-2014, Averaged (or assigned) by Township, KGS Draft Map

# Finney County Impairment Discussions in GMD3



1:24,000

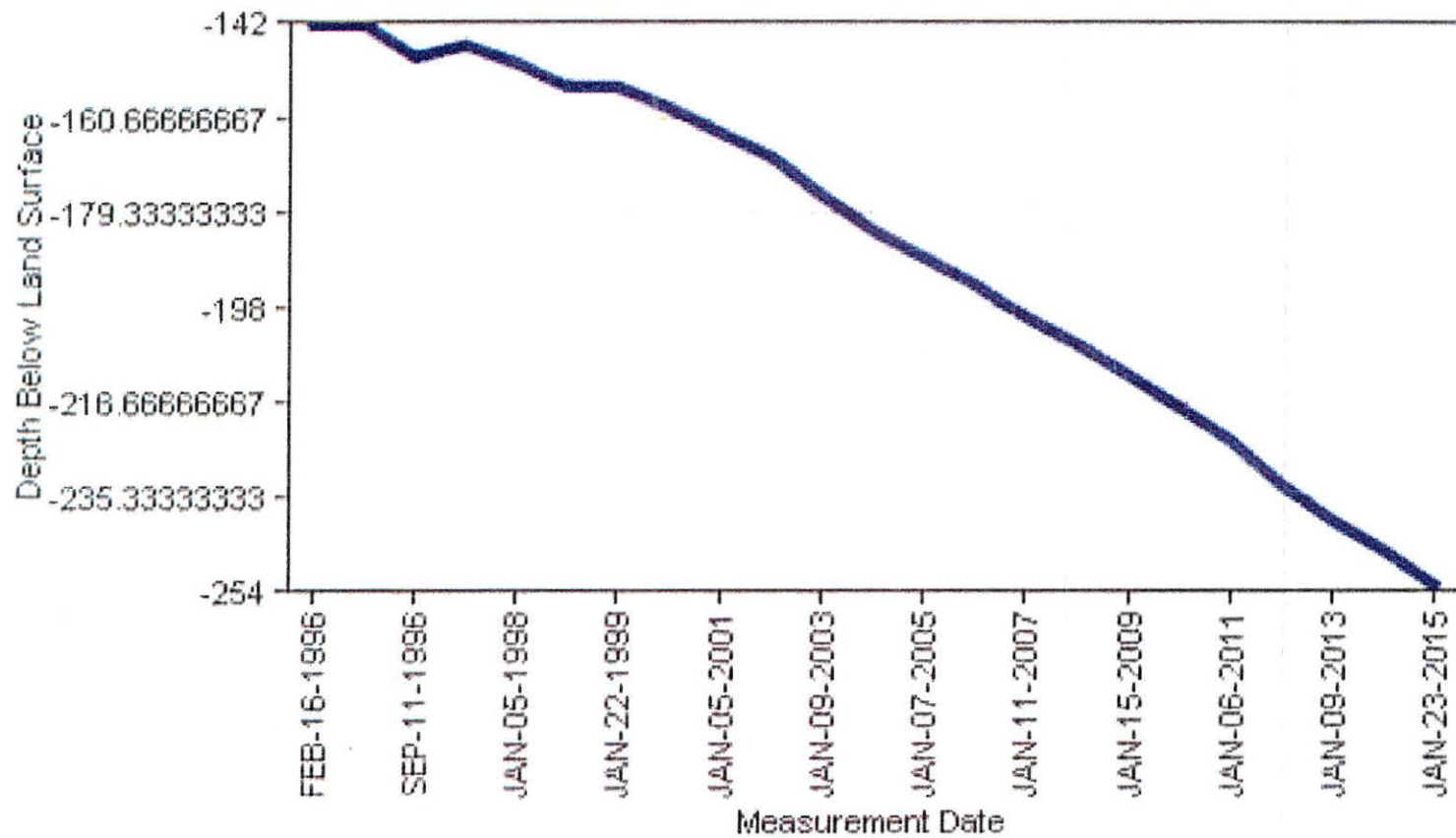
Created By:  
Trevor Ahring, P.E.  
Southwest Kansas GMD 3

3-5

SOUTH WELL  
10-26-33w

3-6

### Hydrograph- Depth to Water Below Land Surface



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900 SW Jackson, Room 456  
Topeka, Kansas 66612  
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Jackie McClaskey, Secretary

Governor Sam Brownback

**Testimony on Water Vision Update to  
2015 Special Committee on Agriculture and Natural Resources  
By Susan Metzger, Assistant Secretary  
Kansas Department of Agriculture  
October 22, 2015**

Chairman Schwartz, my name is Susan Metzger and I serve as an Assistant Secretary for the Kansas Department of Agriculture. I appreciate the opportunity to appear today before the Agriculture and Natural Resources Interim Committee to provide an update on the Vision for the Future of Water Supply in Kansas (the Vision).

The Vision called for the development of regional water supply goals by local leadership teams. In August, the Kansas Water Authority approved the goals recommended for the state's fourteen water planning regions. With this recent incorporation of goals, the Vision document is now complete.

In November 2014, Governor Brownback challenged his Administration and the citizens of Kansas to be actively implementing at least 75 percent of the more than 100 Phase I Action Items contained within the Vision by November 2015. As of the date of this interim hearing, one month prior to the 2015 Governor's Water Conference, we are nearing that goal with 70 percent of those action items are under implementation. We are confident we will reach the 75 percent target by the Governor's Water Conference.

Two immediate action items were identified in the Vision, including the creation of the Governor's Water Resources Subcabinet and the establishment of a Blue-Ribbon Task Force to address financing water related activities. The Water Resources Subcabinet includes the executive leadership of the Kansas Department of Agriculture, Kansas Water Office, Kansas Department of Health and Environment, and Kansas Department of Wildlife, Parks and Tourism. The Subcabinet held its first meeting on May 6 and have met monthly since to improve coordination on water related issues. Members of the Subcabinet also traveled jointly to Washington, D.C. in July to meet with Kansas' congressional delegation and leadership from the federal water agencies. Members of the Blue Ribbon Task Force have been identified, and a meeting of the Task Force will be scheduled within the next two months.

Several Phase I Action Items were implemented as policy changes during the 2015 Legislative Session. These policy changes include allowing for the rollover of unused allocations in Multi-Year Flex Accounts for program re-enrollees, giving due consideration for past conservation in programs, allowing augmentation as a means to address impairment in the Rattlesnake Creek Basin, and development of Water Conservation Areas (WCAs).

WCAs are a simple, streamlined and flexible tool allowing any water right owner or group of owners the opportunity to develop a management plan to reduce withdrawals in an effort to extend the usable life of the Ogallala-High Plains aquifer. Since the legislation was signed into law in April, focus has been education and outreach through television, radio, print media, online and one-on-one landowner meetings. Serious interest in the tool has been expressed by water right owners in Groundwater Management Districts (GMDs) #1, #3, and #4. We continue working with these interested water right owners on their WCA management plans with the goal of implementing the first WCA before the end of 2015.



In addition to legislative changes, the Kansas Department of Agriculture is seeking additional stakeholder input on four proposed changes to rules and regulations identified as Phase I Action Items. These include limiting the movement of a point of diversion in areas of significant decline, civil penalties for exceeding authorized quantity of water and for failure to submit water use reports, and clarifying the Department's authority to seal flowmeters.

Implementation of the strategies and action items identified in the Vision remains a high priority for the Department, our sister agencies and our partners. Thank you for the opportunity to provide this update. At the appropriate time I will be available for questions.



## Water Conservation Areas

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In April 2015, Kansas Governor Sam Brownback signed into law a bill allowing for Water Conservation Areas (WCAs), a simple, streamlined and flexible tool that allows any water right owner or group of owners the opportunity to develop a management plan to reduce withdrawals in an effort to extend the usable life of the Ogallala-High Plains Aquifer.

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### **Who is eligible to form a Water Conservation Area?**

Any groundwater water right owner or group of water right owners in an area of need of conservation may form a WCA. Water rights must be vested or certified in the same source of supply. Landowners with multiple water rights are eligible to group those rights into one WCA or multiple WCAs.

For the purpose of a WCA, an area in need of conservation must meet one or more of the following conditions:

- Groundwater levels in the area are declining or have declined excessively;
- Rate of groundwater withdrawal within the area in question equals or exceeds the rate of recharge in the area;
- Preventable waste of water is occurring or may occur in the area; or
- Unreasonable deterioration of the quality of water is occurring in the area.

Participation within a WCA is 100 percent voluntary and may also afford flexibilities that are not available to water right owners outside of a WCA or LEMA. These may include creating multi-year allocations, allowing the movement of allocations between enrolled water rights, or allowing the use of water for new uses.

WCAs do not make any permanent change in enrolling water rights and can be limited in duration to allow water right owners to try out the controls.

### **How is a Water Conservation Area developed?**

Water right owner(s) meet with Kansas Department of Agriculture staff to review water rights and goals for the WCA and then develop a management plan to serve as the basis of the WCA consent agreement. The management plan should include names and contact information of the primary WCA representative, clear geographic boundaries, written consent of all participants, information regarding the state of the groundwater conditions, and conservation measures.

During the review process, KDA develops a consent agreement and order of designation. Once all participating water right owner(s) sign the consent agreement, the WCA can begin implementation. The process from the initial meeting to implementation of a WCA can take just a few months.

Help is available at any step during the process by contacting the Kansas Department of Agriculture, Division of Water Resources at (785) 564-6640.

The Chief Engineer will be responsible for monitoring and enforcement of any corrective control provisions in the WCA.

### **How is a Water Conservation Area different from a LEMA or IGUCA?**

While the underlying goals of WCAs, LEMAs and IGUCAs are similar – to conserve water resources and extend the usable life of the aquifer – WCAs have the benefit of greater flexibility and 100 percent voluntary participation.

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For more information, visit <http://agriculture.ks.gov/wca>

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# Water Rules and Regulations

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Conserving water resources in Kansas is critical to the state's agricultural community. The Kansas Department of Agriculture has worked with Governor Brownback, the Kansas legislature and all water stakeholders to improve water law and regulation to promote locally-driven, flexible solutions to conserve and improve Kansas water resources.

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## **Limiting Movement of a Point of Diversion**

On average, the Kansas Department of Agriculture annually receives approximately 500 applications for the movement of a point of diversion of a well. Of those 500, approximately 100 applications are for changes of greater than 300 feet. In areas of declining groundwater, the department and many Kansans who participated in the development of the 50-year Vision for Kansas Water are concerned that a rise in change applications may lead to a greater risk of aquifer declines and impairments of nearby wells, including domestic wells.

KDA is seeking feedback from water right owners and industry partners on the impacts and feasibility of limiting the ability to move a point of diversion.

## **Civil Penalties for Exceeding Authorized Quantity of Water**

Kansas water rights have established legal limits for the quantity of water authorized, diversion rate, place of use, type of use, and other conditions and limitations. Using more water than is authorized, or overpumping, is a serious violation of Kansas water law and should not be considered as a "business" decision. Through multi-year flex accounts (MYFAs) and Water Conservation Areas, KDA has provided water users with tools to flexibly manage their water rights to avoid situations of overpumping.

KDA is seeking feedback from water right owners and industry partners on the civil penalty structure for exceeding the authorized quantity of water to further conserve water resources.

## **Civil Fines for Lack of Water Use Report**

Better managing Kansas groundwater resources and extending the useful life of the Ogallala High Plains Aquifer depends on accurate data related to the annual use of water in the state. To help obtain this critical information, Kansas water right owners are required to complete an accurate water use report annually and submit that report to KDA. Failing to submit a water use report is a violation of the law. There is concern that some water users decide to pay the annual penalty fee rather than submit the water use report.

KDA is seeking feedback from water right owners and industry partners on the penalty structure for failing to submit annual water use reports.

## **Authority to Seal Meters**

Accurate measurements of water use are important for determining compliance with water rights. There is concern that water meters have been tampered with in a way that results in lower recorded water use than actual use. KDA staff conduct checks of flowmeters, but those checks cannot prevent all tampering, which impacts the state's overall water resource.

KDA is committed to maintaining the integrity of water use records and seeks feedback from water right owners and industry partners about the authority and feasibility of sealing flowmeters to prevent tampering.

*Attachment 6  
SCANR 10-22-15*

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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<http://www.kslegislature.org/klrd>

October 22, 2015

**To:** Special Committee on Agriculture and Natural Resources

**From:** Joanna Wochner, Principal Research Analyst; and  
Heather O'Hara, Principal Research Analyst

**Re:** Noxious Weed Legislative History

## Background

**1895.** The first law addressing control and eradication of noxious weeds in Kansas was passed by the 1895 Legislature. It was declared all weeds known as Russian thistle and Canada thistle should be destroyed on all lands by those who owned the land or the county commissioners. In addition, overseers of highways in every township or county were responsible to destroy all such noxious weeds if the owners or lessees refused to do so. Likewise, railway companies that were notified that noxious weeds were growing in their right of way were responsible for the noxious weeds' removal. The new law also allowed for prosecution if those responsible did not clear their noxious weeds – guilty of a misdemeanor.

**1897.** In 1897, the Legislature passed additional laws that required county road overseers to remove "cockle-burs, Rocky Mountain sand-burs, burdocks, sunflowers, Canada thistles, and such other noxious weeds that could be injurious to the best interests of the farming community."

**1915.** The 1915 Legislature updated the noxious weeds a township trustee should remove from public roads and highways to include "cockle-burrs, Rocky Mountain sand-burrs, burdocks, sunflower, Canada thistles, Johnson grass, and other obnoxious weeds."

**1935.** By 1935, the the Legislature recodified the Kansas Statutes and the laws regarding noxious weeds were changed to state it is the duty of every person and corporation to destroy on all occupied lands, all weeds known as "cockleburs, Rocky Mountain sandburs, burdocks, sunflower, Canada thistles, [and] Johnson grass."

**1937.** In 1937, the Legislature repealed the noxious weeds law and passed the Field Bindweed Control Act. The law required field bindweed be controlled and pesticides for control be available through county commissions. The law also required Kansas State University to approve the methods of control.

**1943.** The 1943 Legislature passed a comprehensive Noxious Weed Act, which authorized the State Board of Agriculture (the predecessor of today's Kansas Department of Agriculture [KDA]) to adopt official methods of noxious weed control. The list of noxious weeds

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was expanded to include: kudzu, field bindweed, Russian knapweed, hoary cress, Canada thistle, quackgrass, leafy spurge, burragweed, pignut, musk thistle, and Johnson grass.

**1988.** The 1988 Legislature repealed provisions in the law that previously permitted county commissions, township boards, and city officials to cooperate with landowners in the treatment and eradication of weeds not declared to be noxious by legislative action. That legislation also allowed county commissioners or the Secretary of the State Board of Agriculture (now KDA), upon receiving a petition, to declare sericea lespedeza a noxious weed. Previously only multiflora rose could have been declared a noxious weed by county commissioners or the Secretary.

**1991.** In 1991, the Legislature passed a bill allowing any board of county commissioners to adopt a resolution authorizing the establishment of a program to provide chemicals used in the control and eradication of noxious weeds through dealers on a discount basis.

**1995.** The 1995 Legislature eliminated language in the law requiring the county weed supervisor in each county to cooperate with the county assessor and deputy assessor in locating infestations of noxious weeds. The bill also changed the date when boards of county commissions and governing bodies of cities and township boards were required to make an annual weed eradication progress report from January 15 to February 15 and clarified that the State Board of Agriculture (now KDA) could require additional weed reports through rules and regulations.

The bill also changed the notice requirements for landowners with an infestation of noxious weeds on their property by adding general notice published in the official county newspaper, in addition to official notice by mail, to the approved methods of notifying landowners of infestations on their property.

The bill made changes to what is to be contained on the legal notice sent to owners and operators or supervision agents when inspection reveals that satisfactory treatment progress has not been made to noxious weed infestations and changed the time within which noxious weed control was to be completed to not less than five days after mailing the notice for all weeds.

The bill also made it permissive, rather than mandatory, that the county weed supervisor enter infested land for eradication and control and requires that the legal notice sent to a landowner, owner, or operator contain a statement that they may be prosecuted under the Noxious Weeds Law.

Another bill changed the penalty for a violation of the law to \$100 per day of noncompliance up to a maximum fine of \$1500. Previously the penalty had been not less than \$50 nor more than \$500 for each count.

**1998.** In 1998, the Legislature passed a bill that, along with some technical cleanups, made sericea lespedeza a state-designated noxious weed, added the seed of the sericea lespedeza to the list of noxious weed seed, required Kansas State University to establish a two year research project to study the biology and control of sericea lespedeza, subject to appropriations, and allowed boards of county commissioners to declare the bull thistle to be a noxious weed in their counties.

**2002.** The 2002 Legislature passed three bills amending the Noxious Weeds Act. The first allowed a petition with a proposition calling for an election to establish a county program to provide chemical material through chemical dealers using discount certificates. If the petition was valid, the county election officer would submit the question at the next state or county-wide election. If the majority approved the establishment of such a program, the county would have to establish the program within 18 months.

The second bill passed in 2002 related to sericea lespedeza disaster areas. The bill allowed the Secretary of Agriculture to designate any county as a sericea lespedeza disaster area in order to provide for control and eradication in that county. Such a disaster area could be designated from July 1, 2002, until June 30, 2005.

The final bill passed by the Legislature in 2002 required the Secretary of Agriculture, in cooperation with the Secretary of Wildlife and Parks, to designate a parcel of land managed by the Kansas Department of Wildlife and Parks (now the Kansas Department of Wildlife, Parks, and Tourism) at Toronto Lake as a research area to study and demonstrate methods of control or eradicating sericea lespedeza. The provisions of the bill were to sunset on June 30, 2007.

**2004.** In 2004, the Legislature eliminated the sunsets on the sericea lespedeza disaster area and the sericea lespedeza control and eradication project at Toronto Lake, both which had been established in 2002.

### **Current Legislation**

During the 2015 Legislative Session, SB 134 was introduced by the Senate Committee on Agriculture. The bill would amend the Kansas Noxious Weed Act that is administered by the KDA, removing the State Noxious Weed List from statute and placing it into regulations within one year of enactment. The bill also would establish the State Noxious Weed Advisory Board and strengthen the ability of county weed departments to enforce the law, also requiring the use of certified weed-free forage on state lands.

The Senate Committee on Agriculture held a hearing on the bill on February 10, 2015. The Senate Committee voted to request an interim committee on the topic of noxious weeds and no further action was taken by the 2015 Legislature. The bill remains in the Senate Committee on Agriculture.

JW-HCO/rc

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
*Legislative Attorneys transforming ideas into legislation.*

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

**MEMORANDUM**

To: Chairperson Schwartz, and members of the Special Committee on Agriculture

From: David Wiese, Assistant Revisor

Date: 10/22/15

Subject: SB 134; Amendments to the Kansas Noxious Weed Law

Senate Bill No. 134 makes several amendments to the current noxious weed law and adds five new sections to the noxious weed law. SB 134:

- Names the provisions of article 13 of chapter 2 of the Kansas Statutes Annotated and new sections 1 through 5 of the bill the “noxious weed act.” (New Section 1)
- Provides definitions for the noxious weed act. "Secretary" means the secretary of agriculture. "Noxious weed" means any species of plant that the secretary shall determine to be a noxious weed in rules and regulations adopted and promulgated by the secretary. (New Section 1)
- Provides for an emergency declaration of noxious weeds by the secretary of agriculture and establishes the requirements for such emergency declaration. (New Sec. 2)
- Establishes the state noxious weed advisory committee or the "state advisory committee" and sets out the membership, terms of office and duties of the state advisory committee. (New Sec. 3)

*Attachment 8*  
*SCANR 10-22-15*

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LEGISLATURE of THE STATE of KANSAS

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- Describes unlawful practices relating to noxious weeds and provides exceptions for research sanctioned by a state or federal agency or an accredited university or college or activities specifically permitted by the secretary. (New Sec. 4)
- Requires that all alfalfa, grass, hay or other forage, straw or mulch carried onto or used for any purpose with the boundaries of any lands owned or managed by the state and its agencies must be certified noxious weed free. (New Sec. 5)
- Sunsets the current statutory list of noxious weeds found in K.S.A. 2-1314 and 2-1314b on July 1, 2016, and would require the secretary to adopt rules and regulations to declare the weeds of the state that are noxious weeds. The secretary shall not declare any species to be a noxious weed without the recommendation of the state advisory committee, except under an emergency declaration. It also allows a board of county commissioners, with the approval of the secretary, to publish a list of the species of weeds to be controlled in the county, in addition to those declared by the secretary to be noxious weeds. The bill also requires the board of county commissioners to submit to the secretary for approval official methods for the control and eradication of such species. If a species listed by the board of county commissioners is later declared a noxious weed by the secretary, the official methods adopted by the secretary for the control and eradication of such species shall control over any methods approved by the county commissioners. Cost share chemicals shall be made available. (Sec. 6 and Sec. 7 for multiflora rose and bull thistle)
- Strikes language which allows the secretary to designate any county as a sericea lespedeza disaster area to provide for the control and eradication of sericea lespedeza within such county after consultation with the board of county commissioners of such county. (Sec. 8)
- Places the responsibility for the enforcement of the act in the board of county commissioners as to lands within the boundaries of such county. Cities and townships may enter into an agreement with the board of county commissioners to take upon themselves the responsibility of enforcement of this act. (Sec. 9)



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LEGISLATURE *of* THE STATE *of* KANSAS

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- Changes the procedure by which a county weed supervisor makes a survey of the infestations of noxious weeds. The bill requires the weed supervisor to make an annual survey of weed infestations and ascertain the approximate amount land and highways infested with each kind of noxious weed not later than October 31 of each year. The weed supervisor shall compile data on area eradicated and under treatment and other data as the secretary deems necessary and submit, by March 15 of each year, an annual weed eradication progress report to the board of county commissioners for their signatures and then to the secretary. The weed supervisor shall also prepare and submit a management plan for the coming year. (Sec. 9(e))
  
- Strikes current law requiring the county commissioners and the governing body of cities to report to the secretary as to the extent and the official method of control and eradication of noxious weeds to be undertaken in any one season in their jurisdiction, subject to approval of the secretary. (Sec. 10)
  
- Allows each county, city or township to either make a tax levy or set aside a portion of the county general fund equivalent to pay the cost of control and eradication of noxious weeds. The bill also requires that all records relating to funds received into and spent from both the noxious weed eradication fund and the noxious weed capital outlay fund be retained by the county for not fewer than five years and shall be made available to the Kansas department of agriculture upon request. (Sec. 11)
  
- Increases fines for violations of the act from \$100 per day and a maximum fine of \$1,500 to \$200 per day for each violation and no maximum. (Sec. 15)
  
- Amends the current statutory legal notice requirements to the owner and operator or supervising agent of noxious weed infested land and would require the secretary to adopt rules and regulations defining the legal notice to be given to the owner and operator or supervising agent of the land. Prior to issuing any legal notice, the bill also allows the weed supervisor to notify the owner, operator or supervising agent by electronic means of the noxious weed infestation in addition

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to the current authorized notifications of telephone call, personal contact or first class mail. (Sec. 17(e))

- Allows counties greater flexibility in financing their noxious weed programs. If the program is funded primarily through the county general fund, counties may accept payments into such fund and make payments out of such fund and if the program is funded from more than more source, all moneys collected shall be paid from each source in proportion to which it contributes to the noxious weed program. (Secs. 9(d), 12(b), 13, 14(f), 17(b), 18)
  
- Allows counties to either collect up to 50% of the cost of treatment from a landowner or establish a payment plan with the landowner for payment of the full amount of the lien over time. (Sec. 18)

SB 134 would become effective upon publication in the statute book.

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Manhattan, Kansas 66502  
(785) 564-6700



900 SW Jackson, Room 456  
Topeka, Kansas 66612  
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

**Testimony on SB 134 to  
2015 Special Committee on Agriculture and Natural Resources  
By Chad Bontrager, Deputy Secretary and  
Jeff Vogel, Plant Protection and Weed Control Program Manager  
Kansas Department of Agriculture  
October 22, 2015**

KDA has responsibility for administering the Kansas Noxious Weed Law. This information covers the proposed changes made to that law by SB134.

SB134 targets three areas in making improvements in the Kansas Noxious Weed Law. First and foremost, the bill creates the state noxious weed advisory committee and places the state noxious weed list in regulation.

- Weeds would be added or removed from the list upon recommendation of the advisory committee to the Secretary of Agriculture and promulgation of regulations by the Secretary.
- There are currently 12 weeds on the noxious weed list in statute. This list will expire on July 1, 2017 in order to give us time to work those weeds into regulation and not have a gap in coverage.
- The advisory committee will consist of 11 members appointed by the Secretary. The committee will represent landowners, weed scientists, county weed directors and herbicide businesses that will provide science-based recommendations on the control of noxious weeds.
- By establishing a committee of individuals that have an extensive and working knowledge of the management of weeds, their expertise will guide and advise the Secretary, providing an improved response to potentially noxious weeds in terms of eradication or control. This advisory committee will also provide for a thorough, scientific and objective evaluation of weeds under consideration.

Second, SB134 makes changes to the noxious weed law that streamline the administration of the law by KDA and county weed departments.

- The bills gives counties the ability to more effectively manage the money for the noxious weed program through their general fund, if they so choose, and allows for money to be carried over from year to year for noxious weed control activities.
- County commissioners, weed directors, and KDA are more fully incorporated into the requirements for weed management activities and reporting so that all parties can be more knowledgeable of the processes.

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- This measure would also allow counties to either collect up to 50 percent of the cost of treatment from a landowner or negotiate a payment plan and return money to the noxious weed capital outlay fund in a timelier manner.
- Counties are given the ability to have county specific noxious weeds if they so choose. SB134 clarifies that counties are responsible for the control of all noxious weeds within the county border unless that responsibility has been taken on by a city or township.
- The bill clarifies the records retention process for counties and KDA. SB134 gives landowners added protection and improves compliance with the noxious weed law by increasing the penalty for violations to \$200 per day.

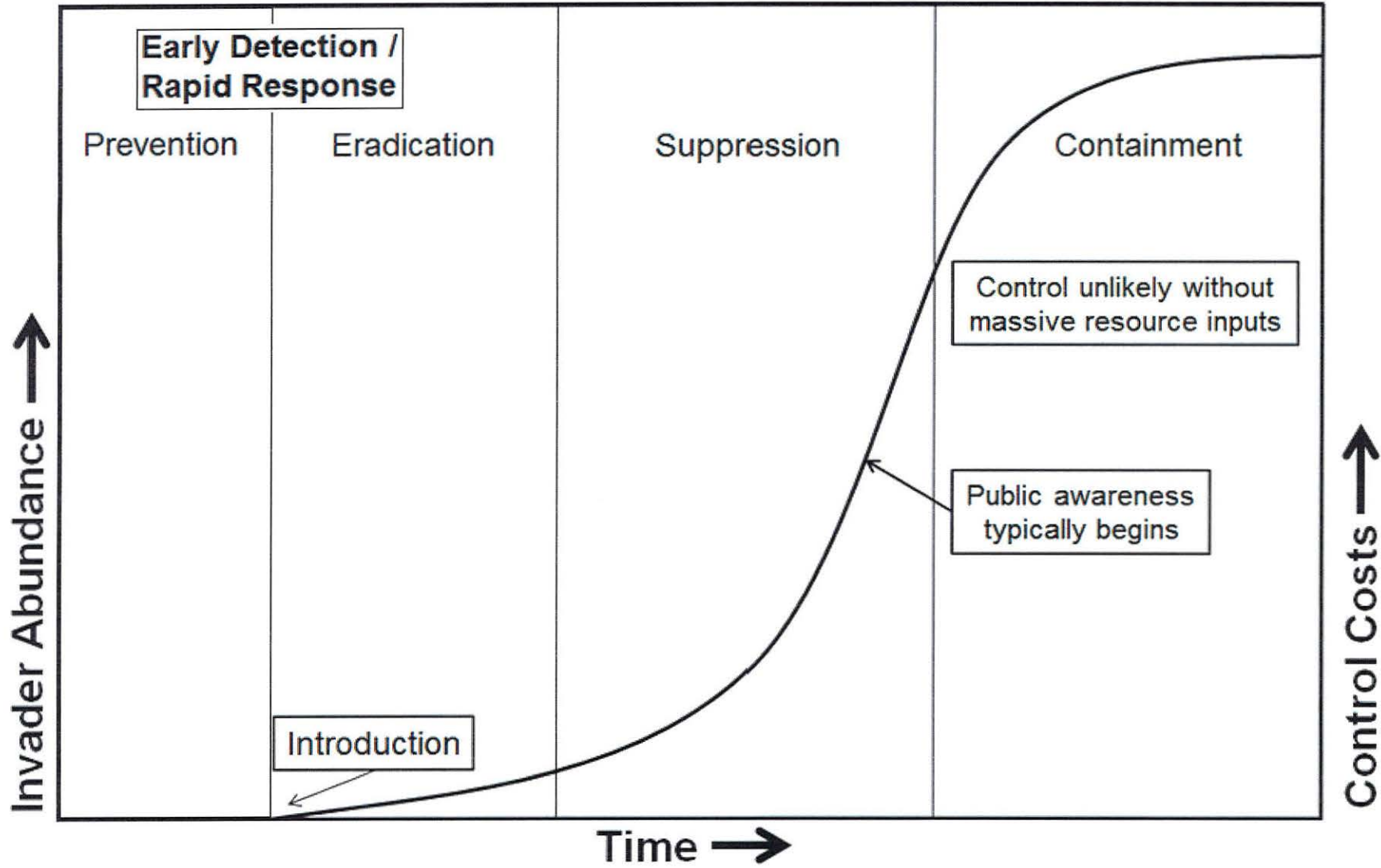
Third, SB134 updates and cleans up the noxious weed law in order to accommodate the changes outlined above as well as address outdated and unused provisions.

- The option for a declaration of sericea lespedeza disaster area is removed along with the requirement for conducting research on sericea lespedeza control.
- The outdated reference to the division of noxious weeds is removed.
- The requirement that KDA pay a quarter of the county weed directors' salary is removed.
- The section of the noxious weed law requiring weed supervisors to file a surety bond is removed.
- County commissioners will no longer be required to submit an annual report.
- Notification requirements are updated to allow for the use of websites and electronic mail.

Thank you for the opportunity to testify in support of SB134 and the proposed changes to the noxious weed law. We believe these changes are important to improving the eradication and control of noxious weeds in Kansas.

# Invasive Species Invasion Curve

9-3



**Prevention** - Preventing the introduction of the species.  
**Eradication** - Eliminating all of the infestations.  
**Suppression** - Reducing or eliminating the number of infestations.  
**Containment** - Reducing or eliminating the further spread of the infestations

Adapted from: Hobbs, R.J. and Humphries, S.E. 1995. An integrated approach to the ecology and management of plant invasions. Conservation Biology 9, No. 4: 761-770.

# Kansas' Noxious Weeds

9-4



Field Bindweed  
(*Convolvulus arvensis*)



Sericea lespedeza  
(*Lespedeza cuneata*)



Pignut  
(*Hoffmannseggia densiflora*)



Kudzu  
(*Pueraria lobata*)



Bur ragweed  
(*Ambrosia grayii*)



Musk thistle  
(*Carduus nutans*)



Russian knapweed  
(*Centaurea repens*)



Canada thistle  
(*Cirsium arvense*)



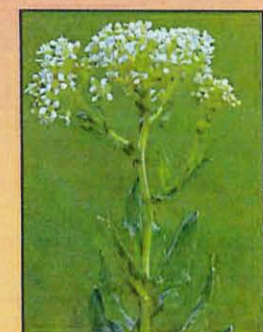
Johnsongrass  
(*Sorghum halepense*)



Quackgrass  
(*Agropyron repens*)



Leafy spurge  
(*Euphorbia esula*)



Hoary cress  
(*Cardaria draba*)

## Plant Protection and Weed Control

1320 Research Park Drive  
Manhattan, KS 66502  
Phone: (785) 564-6698  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)



Bull thistle  
(*Cirsium vulgare*)  
- County optional -



Multiflora rose  
(*Rosa multiflora*)  
- County optional -

AD ASTRA PER ASPERA  
**Kansas**  
Department of Agriculture  
Plant Protection and Weed Control

**Field bindweed** — A non-native perennial in the morning glory family with arrowhead-shaped leaves and white to pink bell-shaped flowers. This Eurasian plant is found throughout Kansas and spreads via a fleshy root system and by seed.

**Sericea lespedeza** — A short-lived perennial in the bean family native to Asia. The plant has cream-colored flowers with purple markings and leaves with three parts. It is common in rangelands and prairies throughout eastern Kansas, especially in the Flint Hills.

**Pignut or Hog potato** — A perennial herb in the bean family native to extreme southwestern Kansas. The plant has yellow flowers and a deep root system with small potato-like growths that make the plant difficult to control and provide its colorful common names.

**Kudzu** — A perennial vine in the bean family native to Asia. The plant has large three-parted leaves and reddish flowers. Introduced as erosion control on mined lands in southeast Kansas, it's now found in only a few scattered areas of the state.

**Bur ragweed** — A native perennial from western Kansas in the aster family. The plant has an aggressive root system that spreads over large areas. The leaves are covered with silvery-gray hairs and the fruit is ringed by slender spines that have hooked tips.

**Musk thistle** — A biennial in the aster family and is native to Eurasia. Found throughout Kansas, the plant forms a rosette of spiny, white-edged leaves during the first year. The second year the plant sends up a stalk with spiny, purplish flower heads .

**Russian knapweed** — A non-native perennial in the aster family. Found sporadically in Kansas, this Asian plant has pink or purplish flower heads and forms dense stands from an extensive root system. This plant is toxic to horses if eaten.

**Canada thistle** — A perennial in the aster family with a spreading root system capable of growing 3' to 5' per year. The pink male and female flower heads occur on separate plants. Native to Eurasia, it is found on disturbed sites mostly in northwest Kansas.

**Johnsongrass** — A perennial grass from the Mediterranean that is related to and can hybridize with grain sorghum. The grass spreads aggressively by seeds and by thick, scaly roots. Found throughout Kansas it is common along roads and ditches.

**Quackgrass** — A non-native grass from Eurasia. The base of each leaf blade has a pair of tiny appendages that fold around the stem. Found at scattered, moist locations throughout Kansas, the grass spreads via seed and a vigorous, spreading root system.

**Leafy spurge** — A perennial in the spurge family that is native to Eurasia. The plant has a yellowish, flower-like disk below greenish flowers and a milky sap that is toxic to cattle. Leafy spurge is found in disturbed locations mostly in northern Kansas.

**Hoary cress** — A non-native perennial in the mustard family. The plant spreads via seed and its creeping root system. The leaves wrap around the hairy stems and fragrant white flowers occur at the stem tips. Found throughout Kansas, especially in the north.

**Bull thistle** — A biennial in the aster family. The plant has a stalk of dark purple flowers with a ring of stiff spines at their base. Found throughout Kansas, this Eurasian plant is common along roadsides and other disturbed sites. Bull thistle is a county-option weed.

**Multiflora rose** — A large shrub in the rose family. The plant has arching stems armed with claw-like prickles. The white to pink flowers occur in clusters at the ends of the stems. This Asian plant is found throughout Kansas. Multiflora rose is a county-option weed.

### **Kansas Law (KSA 2-1314)**

Requires landowners to control noxious weeds on their property.

For more information call the Kansas Department of Agriculture or your County Weed Director.

9-5

1320 Research Park Drive  
Manhattan, Kansas 66502  
(785) 564-6700



900 SW Jackson, Room 456  
Topeka, Kansas 66612  
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

## Detailed Explanation of SB 134

This document will walk through SB 134 and identify and explain all of the proposed changes to the noxious weed law. SB 134 targets three areas in making improvements in the Kansas Noxious Weed Act. First and foremost, the bill creates the state noxious weed advisory committee and places the state noxious weed list in regulation. Second, SB 134 makes changes to the noxious weed act that streamlines the administration of the law by KDA and county weed departments. Finally, the bill updates and cleans up the act in order to accommodate the changes proposed as well as address outdated and unused provisions. In this document each area of explanation will be covered in the order it appears in the bill and is color-coded to match with its corresponding improvement target area. Those changes dealing with the advisory committee and putting the weed list in regulation will be in purple. Those dealing with streamlining the administration of the law will be green and those for updating the law will be in red.

1. New Section 1 groups all the definitions and moves them to the beginning of the Act.
2. New Section 2 gives the secretary the ability to make an emergency declaration of noxious weeds for an 18 month period of time.
3. New Section 3 outlines the creation of the state noxious weed advisory committee and delineates its authority and responsibilities.
4. New Section 4 pulls all of the references to unlawful acts throughout the law and concentrates them in this new section.
5. New Section 5 requires that certified weed free forage products be used on any state lands in the state.
6. Section 6(a) is changed to accommodate the advisory committee recommendation to the secretary and the secretary's issuance of regulation regarding noxious weeds.
7. Section 6(b) calls for the existing noxious weed list in statute to expire July 1, 2016 in order to move the list to regulation and give time for the committee to be formed and regulations to be issued.
8. Section 6(c) gives county commissioners the authority to declare county noxious weeds and spells out the parameters of such a declaration.
9. Section 7(b) is changed to expire July 1, 2016 when the advisory committee and secretary will assume responsibility for determining if multiflora rose or bull thistle <sup>are</sup> to become noxious weeds.
10. Section 8 is adjusted to remove the reference to sericea lespedeza disaster areas. Sericea lespedeza is currently listed as a noxious weed.
11. Section 9(a) is added to clarify that counties have responsibility for noxious weed control in the entire county unless cities or townships take on that responsibility. This is the current practice being followed, but we wanted to clarify the statute.

Attachment 10  
SCANR 10-22-15



12. Section 9(c) removes the outdated reference to the division of noxious weeds, etc.
13. Section 9(d) removes the outdated reference to KDA paying a portion of county weed director salaries. Also adds language that allows counties to operate through the general fund.
14. Section 9(e) removes the responsibility for providing an annual report from county commissioners.
15. Section 10 removes a vague reference to the required management plan which was addressed in Section 9(e).
16. Section 11 removes the weed supervisor survey requirements which were addressed in Section 9(e).
17. Section 11(a) allows counties to use the general fund or levy a tax for noxious weed control and also spells out that carryover money shall be used for noxious weed work in the following year. This is current practice, but the changes bring clarity in the statute.
18. Section 11(b) is new and pertains to records retention requirements.
19. Section 12(c) removes a definition that was relocated to New Section 1.
20. Section 12(d) removes language that was addressed in Section 14(b) and (c).
21. Section 13 removes the limitation that counties can only collect the equivalent of 5 percent of assessed valuation per year of a debt incurred during voluntary transactions. This section also adds language that allows for managing the program through the county general fund.
22. Section 14(a) restricts where counties can use chemicals and equipment to control weeds other than those that have been declared noxious.
23. Section 14(b) and (c) spell out how the county can go about selling chemicals to landowners and gives the added flexibility of using the general fund if they so choose. Both (b) and (c) allow the county to charge 100 percent of their cost if they have levied a tax or appropriated a budget equivalent to 1.5 mills for the noxious weed program either in a dedicated fund or through the general fund.
24. Section 14(f) is new and requires that all money collected by the county for the sale of chemicals be used for noxious weed eradication whether through a dedicated fund or through the general fund.
25. Section 15 increases the penalties for violation of the act.
26. Section 17(a) removes a definition already defined in New Section 1.
27. Section 17(b) removes the requirement that KDA send a copy of the general notice to the county weed directors. The flexibility to manage money through the general fund is also added in this section.
28. Section 17(e) removes the requirements for legal notice from statute and adds that the secretary shall promulgate rules and regulations defining legal notice.
29. Section 17(f) allows electronic means to be used by weed supervisors to contact owners prior to issuing a legal notice.
30. Section 18 adds the flexibility for money management through the general fund and allows the county to either collect up to 50 percent of the cost of involuntary weed control per year via tax rolls or enter into a payment plan with the landowner.



816 SW Tyler St., Topeka, KS 66612  
KCC: 785-233-4068 [www.kansasco-op.coop](http://www.kansasco-op.coop)  
KARA: 783-234-0461 [www.kansasag.org](http://www.kansasag.org)

Oct. 22, 2015

**TO:** Special Committee on Agriculture & Natural Resources

**From:** Leslie Kaufman, Kansas Cooperative Council (KCC)  
Ron Seeber, Kansas Agribusiness Retailers Assoc. (KARA)

**RE:** **SB 134 - Support for moving noxious weed designation to regulatory process; request for amendment relative to noxious weed advisory committee.**

Chairman Schwartz, Vice-chair Love and members of the Special Committee on Agriculture & Natural Resources, thank you for the opportunity to comment today in support of SB 134 as it pertains to the designation of noxious weeds through the rule and regulatory process. We do favor that concept and, additionally, we respectfully request an amendment regarding the noxious weed advisory committee.

I am Leslie Kaufman and I appear today on behalf of the co-op members of the Kansas Cooperative Council. Our membership includes farm marketing and ag supply cooperatives, rural electric and telecommunications companies, insurance and risk management operations, credit unions and the Farm Credit system. KARA is a voluntary trade association whose membership includes over 700 agribusiness firms that are primarily retail facilities supplying fertilizers, crop protection chemicals, and seed to Kansas farmers. Together, our agribusiness members provide many of the crop protection products needed by producers and landowners to control noxious weeds. Thus, this bill is of interest to our associations and our members.

The current legislative process for designating noxious weeds can be time consuming and cumbersome. At times, it can become political, too. Thus, the existing structure might not allow for a quick response in addressing damaging weed issues, and that does concern us.

Our associations have typically expressed a general preference for legislating by statute over rule and regulation. So, it may seem odd to some that we are supporting a move away from a statutory designation structure to a regulatory framework under the Kansas Dept. of Agriculture (KDA). Our organizations also support regulation that is science-based and has practical application in the real world. We see the proposed regulatory management approach contained in SB 134 as a means of strengthening the science behind the noxious weed designation. As an added bonus, this is done through a mechanism that decreases the politics surrounding a listing and encourages industry participation through the advisory committee. As such, the advantages inherent in the regulatory proposal contained in SB 134, in our opinion, outweigh our general bent toward regulating through statute. Thus, we are supportive of the proposed legislation.

We do respectfully request one change in the bill regarding the make-up of the noxious weed advisory committee. Overall, SB 134's panel composition has an appropriate balance of interests. We certainly appreciate the KDA creating 2 spots on the committee for the agribusiness industry. Currently, the bill allows for the appointment of both those 2 representatives based on the recommendation of the Kansas Agribusiness

Retailers Association (KARA) board of directors. KARA and the KCC work very closely together. But, if there are 2 seats available to the agribusiness industry, our associations would ask that the Kansas Cooperative Council board of directors have the ability to offer the recommendations for one of those seats.

An in-line version of our amendment is included at the end of our statement and a revisor's balloon amendment outlining the requested change is attached, too. We certainly hope this committee will be supportive of our suggested change and, at the proper time, incorporate it into SB 134, should the bill move forward.

Thank you for your consideration and we note again our appreciation for the opportunity to voice support for SB 134. Please let us know if you have any questions: Leslie Kaufman, 785-220-4068 or Ron Seeber, 785-234-0461. I will be glad to stand for questions at the appropriate time.

SB 134            KCC/KARA proposed amendment            In line changes – at page 3, lines 5-7

(6) two members shall represent the agricultural industries in the state.  
~~and~~ One member shall be appointed upon the recommendation of the Kansas agribusiness retailers association board of directors and one member shall be appointed upon the recommendation of the Kansas cooperative council board of directors.

Proposed amendment to SB 134  
 2/10/2015

One member of state advisory committee appointed upon recommendation of the  
 Kansas cooperative council board of directors

Prepared by David Wiese, Office of Revisor of Statutes

1 (4) three members shall be private landowners;  
 2 (5) two members shall represent county weed directors and shall be  
 3 appointed upon the recommendation of the county weed directors  
 4 association of Kansas board of directors; and  
 5 (6) two members shall represent the agricultural industries in the state  
 6 and shall be appointed upon the recommendation of the Kansas  
 7 agribusiness retailers association board of directors;  
 8 (b) (1) Except as provided in this section, the term of office of each  
 9 member of the committee shall be four years. The initial appointments to  
 10 the committee shall be as follows:  
 11 (A) Four members shall be appointed for terms of two years;  
 12 (B) four members shall be appointed for terms of three years; and  
 13 (C) three members shall be appointed for terms of four years.  
 14 (2) The secretary shall designate the term of office for each member  
 15 appointed to the first committee. Appointees shall be limited to serving a  
 16 total of two full terms each. Each state advisory committee member shall  
 17 hold office until the expiration of the term for which such member is  
 18 appointed or until a successor has been duly appointed.  
 19 (3) In the event of a vacancy on the state advisory committee, the  
 20 appointing body of the vacating member shall fill such vacancy for the  
 21 remainder of the unexpired term before the next meeting.  
 22 (4) The secretary may remove any member of the state advisory  
 23 committee for misconduct, incompetence or neglect of duty.  
 24 (5) A quorum of the state advisory committee shall be six of the  
 25 members duly appointed to the state advisory committee.  
 26 (6) A quorum of the state advisory committee shall elect or appoint  
 27 annually a chairperson and a vice-chairperson.  
 28 (7) The state advisory committee shall meet at least quarterly.  
 29 (c) The state advisory committee shall, among other duties assigned  
 30 by the secretary:  
 31 (1) Review the state weed management plan every five years and  
 32 recommend changes and updates to the secretary for approval;  
 33 (2) through the use of a risk assessment, designated by the secretary,  
 34 recommend the designation and classification of state noxious weeds;  
 35 (3) review the noxious weed act and the list of species declared to be  
 36 noxious weeds by rules and regulations of the secretary every four years  
 37 and recommend changes to the secretary;  
 38 (4) review the official eradication and control methods for each state  
 39 noxious weed and recommend changes to the secretary; and  
 40 (5) before January 1 of each odd-numbered year report to the  
 41 secretary on the expenditure of state funds on noxious weed control;  
 42 specifically how such funds were spent; the status of the state and county  
 43 programs; and recommendations for the continued best use of state funds

One member

and one member shall be appointed upon the  
 recommendation of the Kansas cooperative  
 council board of directors

## SPECIAL COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

RE: SB 134 – An act relating to noxious weeds.

October 22, 2015

My name is Kenny Baccus. I am the Vice President of the County Weed Director's Association of Kansas (C.W.D.A.K.) and director of the Ottawa County Noxious Weed Department. We appreciate the opportunity to express our support towards Senate Bill 134.

Senate Bill 134, introduced by the Kansas Department of Agriculture (KDA), proposes several changes to the noxious weed law. Our association has been working in conjunction with KDA for the last two years in order to bring you a bill that both KDA and CWDAK can support.

Changing the way invasive weeds are declared noxious from legislative action to regulation under the secretary of agriculture will allow invasive weeds to be dealt with in a timelier manner when infestations are located. Senate Bill 134 would allow the secretary of agriculture to declare a weed noxious with an emergency declaration of up to 18 months so that action to contain or eradicate the weed can be taken and cost-share chemicals can be used. Our association supports declaring weeds noxious by regulation so as to hopefully prevent the next noxious weed in Kansas from becoming another musk thistle or sericea lespedeza, weeds that have cost the landowners of Kansas millions of dollars by becoming well established before action was taken.

Our association also supports the formation of a state noxious weed advisory committee, of which our association would have two members, for the purpose of studying the economic impact of invasive weeds on Kansas agriculture and the need to declare them noxious. The committee, made up of weed experts, would make recommendations through the use of a risk assessment management tool to the secretary of agriculture as to the designation and classification of state noxious weeds.

Senate Bill 134 also allows flexibility for county commissioners to fund their noxious weed programs within their county. Senate Bill 134 allows funding through a tax levy for a noxious weed eradication fund or funding their noxious weed program through the general fund. Our association supports this language which allows county commissioners to fund their individual programs in which ever manor best fits their overall county budget.

CWDAK also supports making changes as to how we collect unpaid accounts either from having served a legal notice for treatment or from an unpaid chemical sale. Currently we can only collect an amount equal to 10% of the assessed valuation of the property per year. This can take several years in many situations to collect the entire bill and the county essentially becomes a financial lender to the landowner. Senate Bill 134 would allow the county to place 50% of the cost of treatment on the tax rolls against the tract of land treated allowing the county to be reimbursed the expenses over a two year period. Senate Bill 134 also allows the landowner to request the county commission work with them to develop a payment plan so as to not cause a hardship to a landowner but puts the responsibility for noxious weed control on the landowner.

Attachment 12  
SCANR/10-22-15

Our association appreciates this opportunity to express our support of Senate Bill 134. I will be happy to try and answer any questions.

Thank You.

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

STATE CAPITOL  
300 S.W. TENTH AVENUE  
TOPEKA, KS 66612  
(785) 296-7196  
Russ.Jennings@house.ks.gov



DISTRICT OFFICE  
P.O. BOX 295  
LAKIN, KANSAS 67860  
(620) 290-1545  
jrussj@gmail.com

J. RUSSELL JENNINGS  
122ND DISTRICT

**HB 2245**  
**2015 Special Committee on Agriculture and Natural Resources**  
**October 22, 2015**

Madam Chair and Members of the Committee:

My constituents and I believe that this bill has considerable merit to foster the uniform and orderly administration of water rights in Kansas. In particular, as a former judge, I know that it is far too easy to acquire temporary orders in many types of cases. Injunctions under K.S.A. 82a-717 have occurred and without Legislative guidance, may inundate the Courts as we have experienced a steady and substantial decline in the static water level of the Ogallala aquifer since 1945. To that end, the fiscal note attendant to this bill may understate the anticipated benefits to help reduce the workload of the Judiciary reference water rights cases. In other words, clear legislative policy will avoid costly and time consuming litigation.

It is particularly important for irrigators and farmers of my District to have a clear understanding of the word 'impairment' as used in the application statute and the enforcement statute. The potential vacuum caused by inaction of the Legislature could lead to Court imposed definitions which may or may not be suitable for policymakers and the Department of Agriculture who is generally charged with administering the water law in Kansas. We know well that the courts will come to conclusions other than those we intend when there is a lack of clarity of legislative intent. Thus, there is a need for Legislative action.

It appears to me that HB2245 attempts to accomplish 4 main goals:

**First**, to get the Court system out of the 'impairment' business when the interested parties are using water in conformity to an authorized permit from the Division of Water Resources. Please note that HB2245 does not limit the Court's jurisdiction to hear cases and issue temporary or permanent injunctions when the use of the water is contrary to an existing permit, e.g. over use or an unauthorized use.

**Second**, the Legislature should define 'impairment' for enforcement purposes the same way the statute was changed in 1957 for the application statute.

**Third**, in cases where the parties and the Court wish to use the Chief Engineer as a 'referee' there should be some rules of order for the Chief Engineer and a mechanism for orderly review

Attachment 13  
SCANR 10-22-15

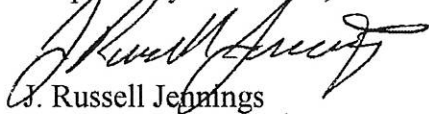
of the report of the Chief Engineer. The report is not self-proving or admissible in evidence unless same meets the scientific standards for admissibility under the rules of evidence.

**Fourth**, in cases where the parties and the Court wish to use the Chief Engineer as a 'referee' then in such event, the Chief Engineer, nor the Court may circumvent the administrative process to alter, amend, change or modify existing appropriation rights.

Protection of property rights is of paramount importance. In cases of claimed impairment the property rights of at least two parties are at risk. I believe we must assure that neither party is placed at unnecessary risk of having operations dependent upon their water right disrupted without an opportunity to be heard and with sufficient credible and scientifically based evidence.

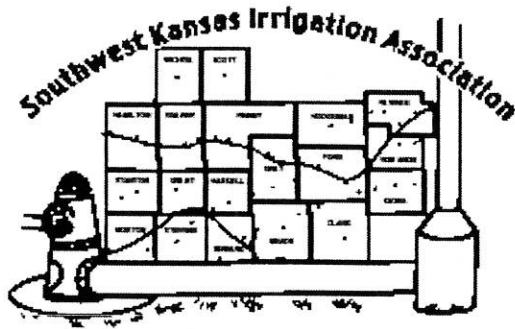
Water law is complicated and this issue deserves full consideration by the legislature. I encourage the committee to recommend further study and deliberations during the regular session so that all parties of interest have an opportunity to contribute to a comprehensive and appropriate decision regarding these matters.

Respectfully Submitted,



J. Russell Jennings  
Representative 122<sup>nd</sup> District





P.O. Box 254  
Ulysses, Kansas 67880  
Office: (620) 356-3021  
Fax: (620) 356-2060  
swkia@pld.com

## Proponent Testimony to the Special Committee on Agriculture and Natural Resources

Rep. Sharon Schwartz : Chair

Sen. Garrett Love: Vice Chair

October 22, 2015

Committee, I am Kirk Heger President of the Southwest Kansas Irrigation Association (SWKIA).

Our association consists of irrigators, agribusiness, and other water users in Southwest Kansas.

We are providing comments in favor of HB 2245.

Our membership believes water right owners in Kansas need surety in their property rights. This means they need to know that their water rights mean the same today as when they were granted. HB 2245 will help accomplish consistency in property rights surety.

Currently very little protection exists for water right owners against a court ordered injunction at the request of any single water right owner having an earlier appropriation date. An injunction can be issued with no administrative process. Court ordered injunctions are too easily available, and with almost no evidence of impairment as the term is used in state administrative quasi-judicial application review processes.

No consistent criteria exists for courts to use agency administrative standards for acting on junior water right applications or investigating impairment complaints under rules and regulations promulgated to implement the water appropriation act or the groundwater management district act. In the rule and regulation adoption/promulgation process, public interest and reasonableness were certainly considered and implemented.

The added language in Section 1(b) of HB 2245 addresses this concern. Note that to be complete in the intent, the list of water right aspects in this section should include a "(5) within the authorized place of use."

Attachment 14  
SCANA 10-22-15

**Paragraph (c)** continues with needed language to further assure that a validly approved, constructed and operated water right preserves needed protections. It requires that a party that is seeking a permanent injunction follow the standards adopted by the chief engineer in his rules and regulations, including fully accessing the aquifer supply available.

**Paragraph (d)** is most important. We believe a reasonable overall decline in the aquifer was recognized and adopted as policy of the legislature in 1957 by requiring the chief engineer to condition water rights. Previously appropriated water rights must tolerate some reasonable effect by newly appropriated water rights as new water rights were developed and water was put to beneficial use. Local GMD's further developed reasonable standards for this policy that were adopted by the chief engineer to determine when water was available for appropriation in those organized groundwater areas.

In southwest Kansas, that standard for many years was water above what would deplete the aquifer static water level 40% or more in 25 years. Injunctions should not be placed on an individual specific water right in a geographic area of overall general declines based on concern over any potential effect when a reasonable affect has been the legislative standard for administrative actions. Especially when there is no act of concern by the agency charged with the administration of the water rights.

**Paragraph (f)** is essential in providing consistency in defining impairment as it inserts the same definition of the legislature for granting new or changed water rights into the injunction statute to avoid the likely outcome that courts will use a different definition than the legislature and the state agency, which can change the granted property rights.

The proposed changes to 82a-725 are necessary to assure a high standard for accountability in the facts, opinions and public interest considerations presented to a court and the local community of water users that may be affected. It also preserves the policy of the legislature that rights are determined in an administrative process for which the terms, limitations and considerations of such rights are reliable after state agency final action.

Southwest Kansas Irrigation Association believes HB 2245 is necessary to provide confidence and surety in Kansas property rights and more specifically water rights. Thank you for your attention to this matter. I am available for questions when appropriate.

Regards,

Kirk Heger  
President SWKIA

Dear Rep. Sharon Schwartz and the Special Committee on Agriculture and Natural Resources:

Old World Bluestems (Caucasian and yellow bluestems) pose a serious threat to Kansas' native rangelands; both threaten the economic and ecological viability of places like the Flint Hills and Gyp/Red Hills. OWBs are warm-season perennial grasses that are less palatable and nutritious to cattle than native warm-season grasses, and once established are difficult to control. OWBs also release "inhibitory" biochemicals that affect the development and growth of neighboring plants. Both Caucasian and yellow bluestems are considered *transformer species*, plants that can change the character, condition, form or nature of ecosystems over a substantial area relative to extent of ecosystem. Attached is a PowerPoint I thought might be helpful for the committee. Please don't hesitate to contact me if you would like additional information regarding this invasive threat.

Regards, Brian Obermeyer

**Brian Obermeyer**

Landscape Programs Manager

[bobermeyer@tnc.org](mailto:bobermeyer@tnc.org)

(620) 273-8556 (Phone)

(620) 583-3981 (Mobile)

(620) 273-8660 (Fax)

[nature.org](http://nature.org)

**The Nature Conservancy**

**Flint Hills Project Office**

(Tallgrass Prairie National Preserve)

2480-B HWY 177

Strong City, KS 66869



Attachment 15  
SCANR 10-22-15

# Old World Bluestems in Kansas Rangelands



Brian Obermeyer  
Landscapes Program Manager  
The Nature Conservancy  
bobermeyer@tnc.org  
(620) 273-8556

15-2

15-3

Invasive species harm ecological systems, damage economies and threaten human well-being. The estimated damage from invasive species worldwide totals more than \$1.4 trillion.



**Sericea Lespedeza**

*Kansas examples*



**Old World Bluestems**

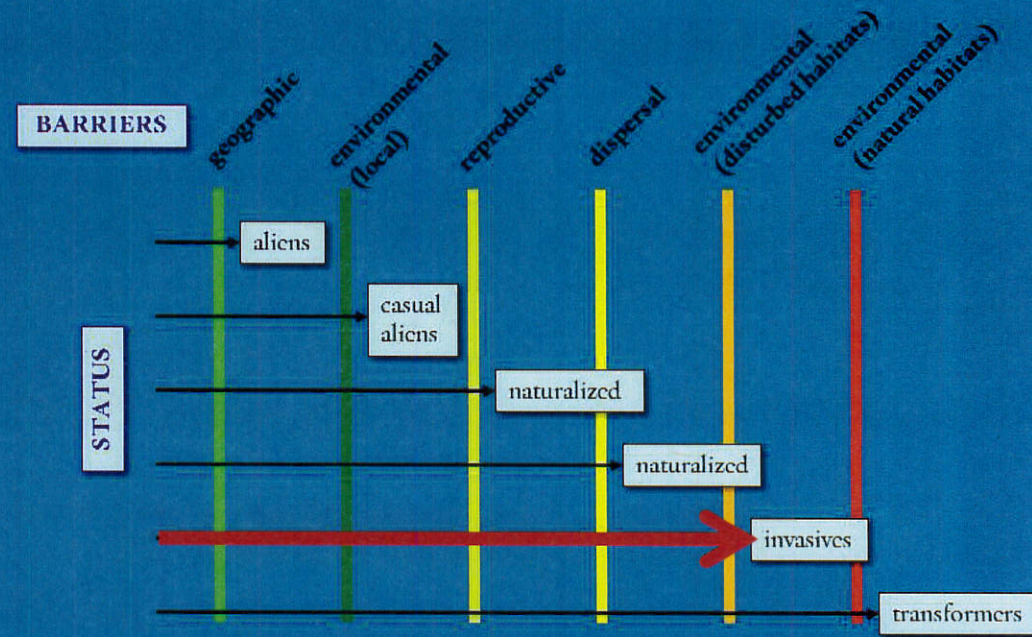
- Where did they come?
- When were they introduced?
- Life history characteristics?
- Where do they grow?
- Are they invasive?
- Can they persist and spread?
- Which pose the greatest threats to ecological systems and human activities?



Study of Weeds – Albrecht Dürer (1503)

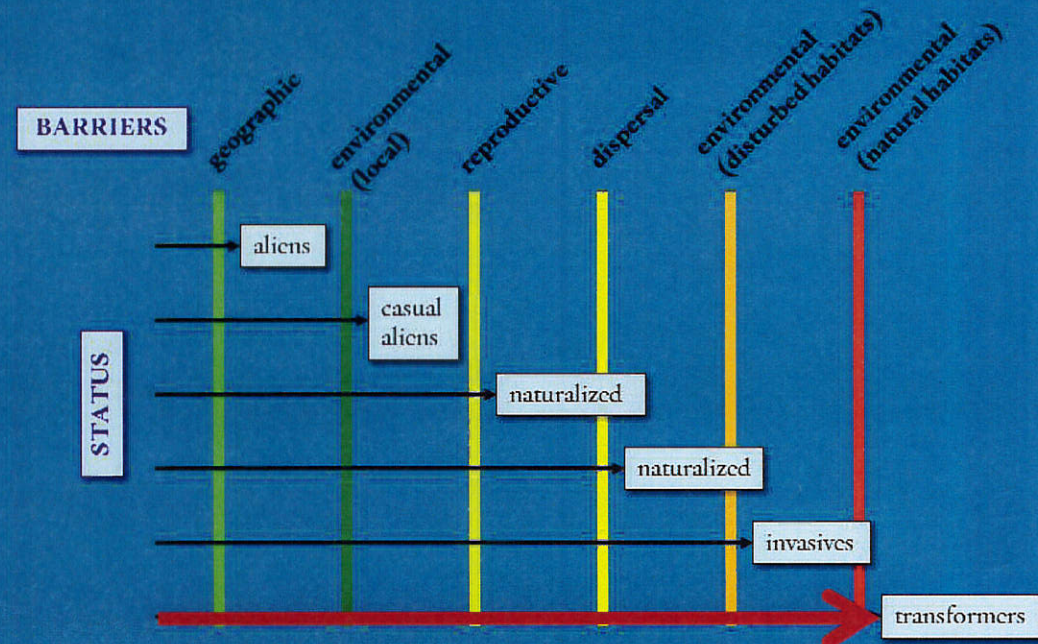
- Have overcome geographic, environmental, reproductive and dispersal barriers
- Invade disturbed, semi-natural and, sometimes, natural habitats
- Produce offspring, often in large numbers, at large distances from site(s) of introduction

*28.7% of KS non-natives*



- Have overcome geographic, environmental, reproductive and dispersal barriers
- Able to invade and even dominate disturbed, semi-natural and natural habitats
- Can change the character, condition, form or nature of ecosystems over a substantial area relative to extent of ecosystem

*5.3% of KS non-natives*

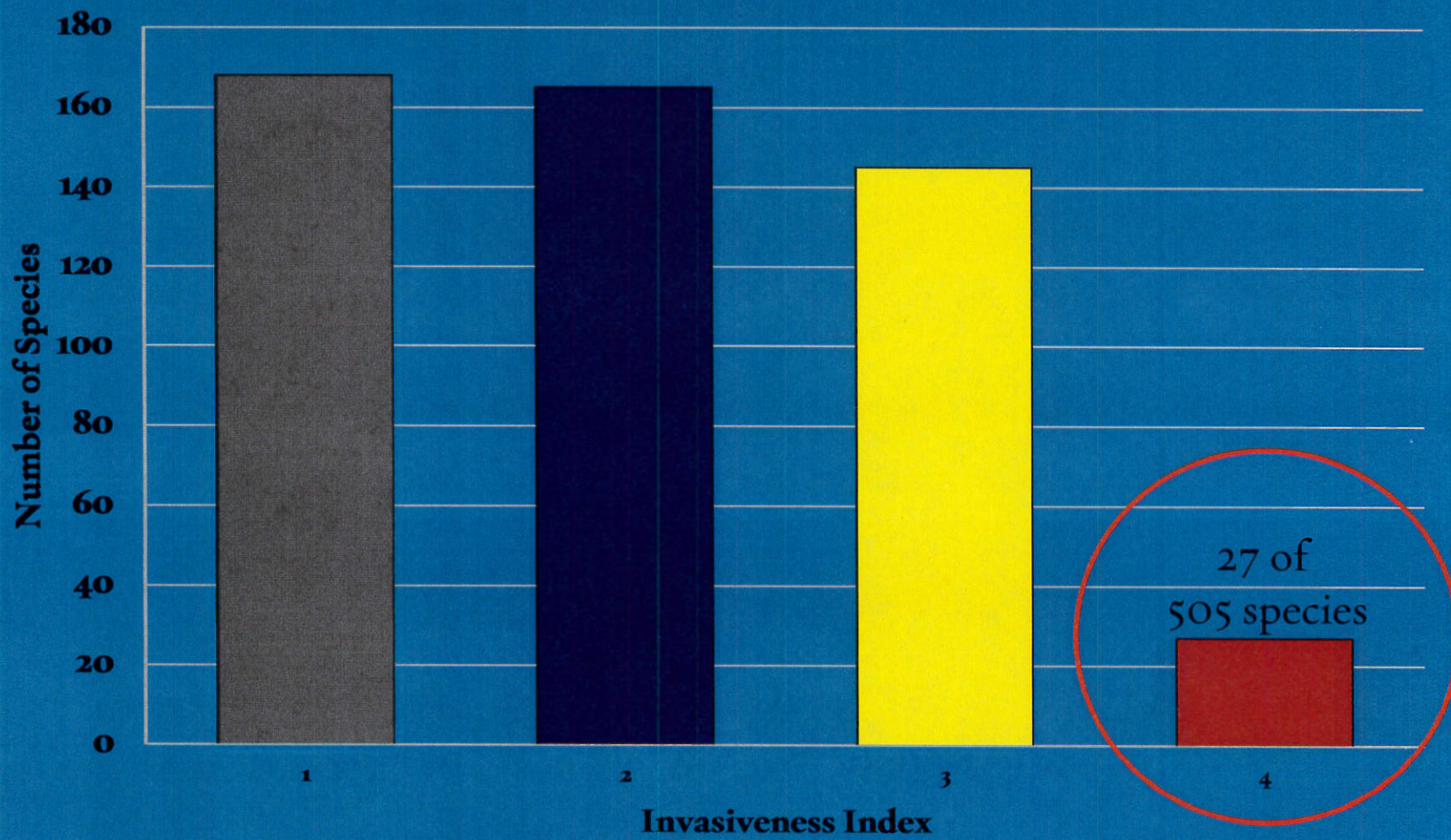






# Estimated invasiveness of over 500 non-native species documented in Kansas

15-7



1 = casual aliens; 2 = naturalized; 3 = invasive; 4 = transformers



### **Old World Bluestems (OWB):**

Caucasian and yellow bluestems are warm-season perennial grasses brought to the United States in the early 1900s for use as forage and to control erosion.

These grasses are less palatable and nutritious to cattle than native warm-season grasses, and once established are difficult to control. Both are considered *Transformer* species.



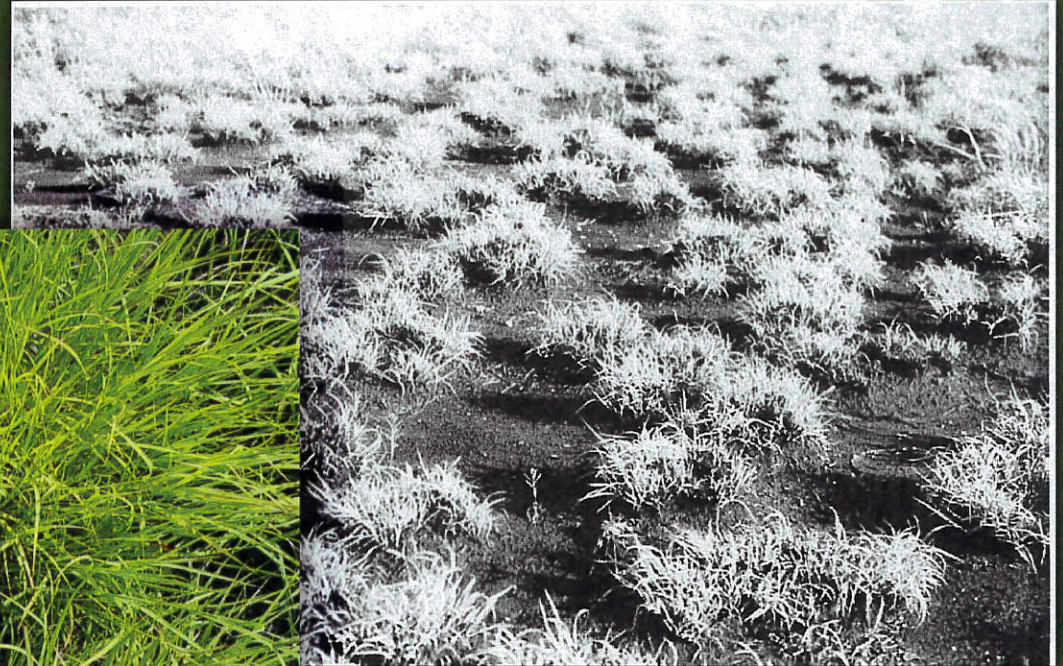
# Multiple Modes of Reproduction



Rhizomes  
Stolons  
Seed production

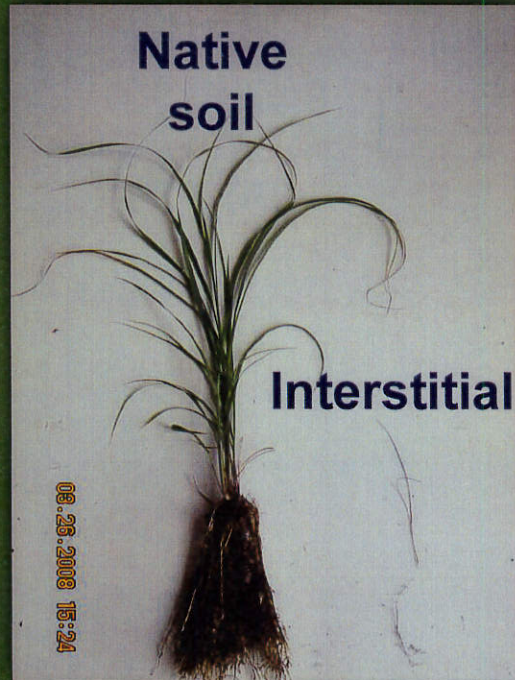
# OWB's produce biochemicals that inhibit competition

Interstitial areas:



**Allelopathy** refers to the chemical inhibition of one species by another. The "inhibitory" chemical is released into the environment where it affects the development and growth of neighboring plants.

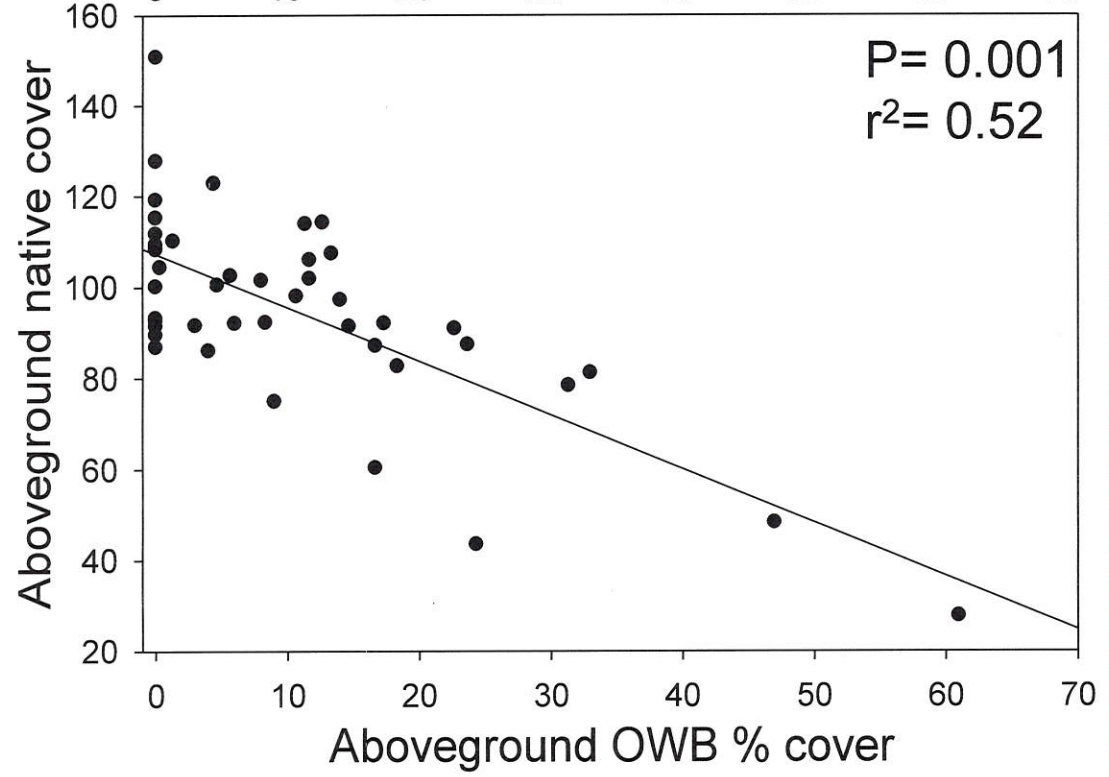
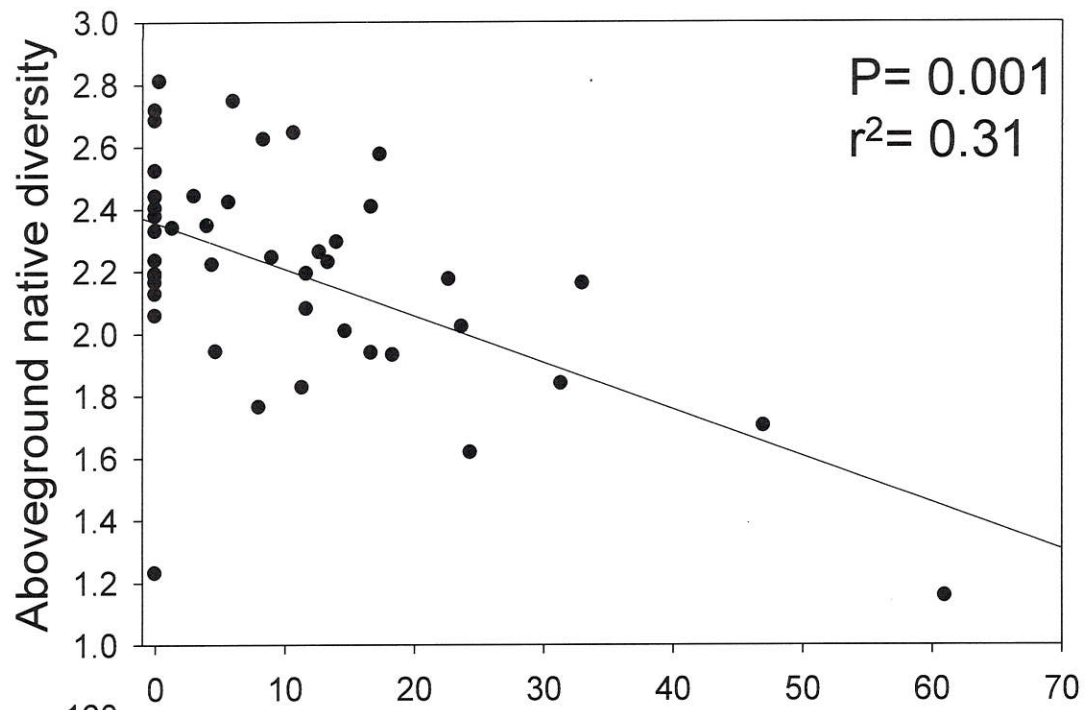
# Soil Alterations



Big bluestem



Little bluestem

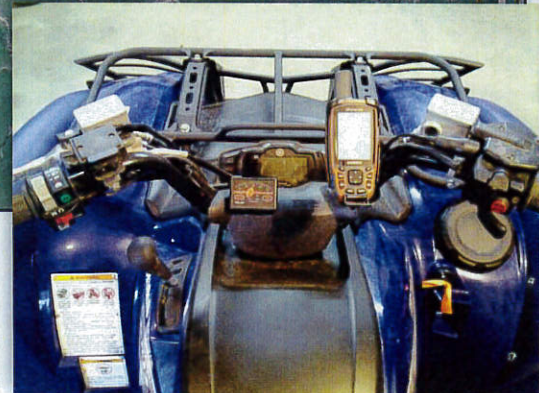
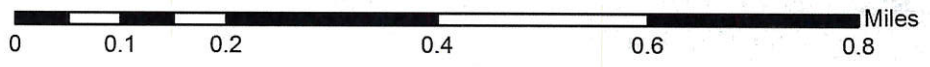
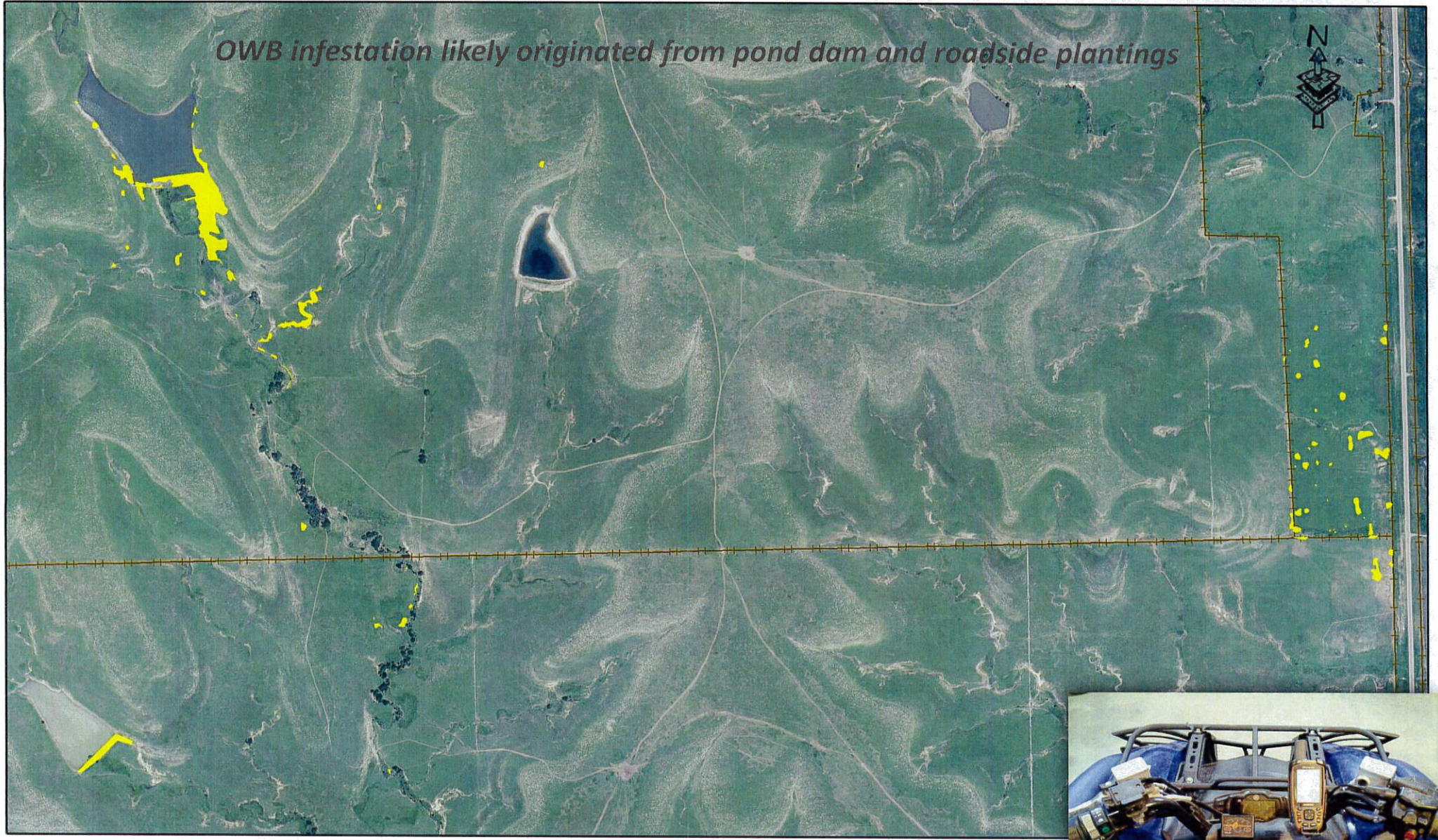


# OWB Effects on Native Plant Diversity

- Native species diversity reduced with increasing OWB cover
- Native species cover reduced with increasing OWB cover

# Mapping of Caucasian Bluestem at the Tallgrass Prairie National Preserve

15-13



# Spot spraying Caucasian Bluestem at the Tallgrass Prairie National Preserve

*Using low rate of Imazapyr (Arsenal)*

15-14



**Water**

**Arsenal  
(Imazapyr)**

**NIS**

50 gal.

25 oz.

4 oz.



# Strategies for landowners to deal with OWBs

- Early detection
- Map during dormant season
- Spot treat with appropriate herbicide/rate
- Monitor treatment
- Repeat treatment as needed
- Educate others about risk and treatment option

October 21, 2015

To: Special Committee on Agriculture & Natural Resources, The Honorable Sharon Schwarz, Chair

From: Margy Stewart, Manager, Bird Runner Ranch; Trustee, Wingfield Township

I am writing to stress the urgency of adding Old World Bluestems (Caucasian Bluestem and Yellow Bluestem) to our Kansas list of Noxious Weeds.

We must do this sooner, rather than later.

Old World Bluestems (OWBs) attack the polyculture of native prairie and replace it with a monoculture of itself that offers very little to graziers and almost nothing to wildlife. Waiting endangers our cattle industry and the jewel of our nascent agri-tourism enterprises, our native prairies.

Waiting means that Prairie Chickens and other prairie creatures will lose habitat. Do we really want an ever increasing number of prairie creatures proposed for listing as Endangered Species? If we are good stewards of our native prairie, the Endangered Species Act will never come knocking on our door. We want to be able to say, as we are currently doing, "Don't list the Prairie Chicken! We are better stewards of prairie habitat than your federal interference could ever be!" But we will not be able to say anything like that in the future if we sit on our hands and do nothing in the face of the threat of invasive OWBs.

The good news is that OWBs can be controlled. Because OWBs form a monoculture, they lend themselves to spot spraying with non-selective herbicides such as glyphosate. With careful spot-spraying, an infestation can be killed without hurting neighboring native plants. In addition, thanks to the research of Extension scientist Dr. Walter Fick, several other herbicides have been shown to be effective for broadcast spraying—killing the OWBs but sparing a proportion of native plants.

The bad news is that OWBs spread quickly, especially in dry years. That means that the longer we wait, the greater the expense of control. Acting now is the "penny-wise" thing to do. Waiting would definitely be "pound-foolish"—a totally unnecessary waste of tax-payer money.

I am speaking from experience in several different areas.

As a Flint Hills landowner and pasture-manager, I was able to keep Caucasian Bluestem from moving from a county roadside into our adjoining native pastures. I did this by following Dr. Fick's recommendation: spot-spraying with glyphosate (expense: less than \$100). I also heeded Dr. Fick's warning: Infestations on roadsides *will* move into adjoining native pastures. Not *might* or *could*, but *will*. But early action protected our most valuable resource, our beautiful native prairie.

Attachment 16  
SCANR 10-22-15

After this successful experience with our own land, our Wingfield Township Board took action to control the infestations on the roadsides throughout our township. We were able to do so for around \$2000. When we took action, adjoining landowners also took action—controlling infestations on their own land—in every case, before the infestations became unmanageably large. A few pasture managers from a neighboring township who were haying Caucasian Bluestem screamed bloody murder when we began taking action—they didn't want the issue even raised—but I noticed every one of those agin-ers attended Dr. Fick's next workshop on controlling OWBs. Some people do hay monocultures of OWBs—but no one wants to exchange the world-class forage value of our native prairies for the lesser palatability and minimal nutritional value of OWBs.

I have also learned about the need to act quickly by soaking up the expertise on offer through informational workshops. I have attended two such workshops with Dr. Fick and one with the world expert on OWBs, Dr. Karen Hickman, accompanied by a field trip with Tom Van Slyke, manager of the Konza Prairie. He has long observed the threat from OWBs and has a decade's worth of practical experience in successfully controlling for OWBs. From these experts I learned that the sooner we start controlling for OWBs, the easier and cheaper it's going to be.

I also learned from these experts that the people with the most knowledge and practical experience are the most optimistic about our ability to defend our native prairies.

In contrast, when our township took action we ran into pessimistic opposition from some county officials. They said, in essence, there's no point in controlling for OWBs because there's no way to do it ; they said also there is no point in controlling OWBs on our county roads because the OWBs will just re-invade from I-70. Needless to say, the first reason is counter-factual--it flies in the face of expertise and experience. The second is nihilistic—it just affirms a race to the bottom. However, it *does* show the need for an immediate designation of OWBs as Noxious Weeds. If counties use state inaction as a reason to do nothing, a Noxious Weed designation would allow state and counties to work constructively together.

In addition, I learned from the experts more about *why* OWBs are lethal to our native prairies and damaging on our roadsides. Interestingly, in their native habitat (Africa & Asia) OWBs are not invasive; they co-exist with co-evolved plants. But here they change the chemistry and the biology of prairie soil so that our existing native plants cannot find the soil microorganisms they need to thrive or the chemical conditions they need to germinate anew. OWBs even repel each other. That's why OWB monocultures are made up of clumps with lots of bare earth in between. There is a lot of gullying in patches of OWBs. (Well meaning people used to plant OWBs on roadsides for erosion *control*, only to find out they were an erosion *cause*.) These chemical and biological effects, combined with cattle's preference for grazing native grasses, means that OWBs take over at the expense of native plants.

Also interestingly, we do have a native mid-grass, Silver Bluestem, that is in the same genus with OWBs. But having evolved here, it is not toxic to our native plants (but maybe it would be to grasses in Africa!).

No wishful thinking will change the biology or the ecology of OWBs and our native prairies. Therefore, we can say one thing for sure: The lethal threat posed by OWBs will manifest itself, and abundantly so, even to people who know nothing of it today. We want them to be able to say, with gratitude, "Thank goodness Kansas acted in time!" We don't want them to have to say, "Why didn't they do something before it was too late?"

So let's take the obvious next constructive step: Let's at least designate these invaders Noxious Weeds.

Thank you for your consideration.

October 22, 2015

**Statement to the  
Special Committee on Natural Resources  
Regarding Senate Bill 134**

By William Browning  
Madison, Kansas

I am a Flint Hills rancher. The family ranch that I manage is 25 miles southwest of Emporia, and is in Greenwood and Chase counties. My experience there prompts me to recommend that the committee include the old world bluestems (specifically Caucasian bluestem and Yellow bluestem) in the noxious weed category.

This very persistent plague first appeared on our land 35 years ago as an unanticipated impurity in a native grass seed mix that we drilled into an old field. I have been fighting it every since, while watching it spread to other pastures, ours and our neighbors'. Old world bluestems produce monocultures in our prairies, crowding out native species, even producing a toxin that discourages our indigenous plants. In well-managed native prairie pastures old world bluestems are frequently ungrazed, as the cattle prefer native grasses which are more nutritious and, more importantly, produce much better weight gains than the Eurasian invaders.

Although K-State is working to assist ranchers in our struggle against this invader, no silver bullet has appeared. Meanwhile it is rapidly spreading, especially along roadsides where highway mowing operations are a vector in the movement of the seed. A most obvious place to observe this is along a 40-mile stretch of Highway 54 from Iola to Rosalia. I have made note of an extensive haying operation in the state-owned roadside area six or eight miles west of Eureka. This hay will be infested with old world bluestem seed, and wherever it is fed to cattle, the metastasis of this exotic will occur. This practice must be stopped. It can be seen spreading from the Highway 54 right-of-way to adjacent pastures at dozens of locations. For these reasons, on behalf of thousands of Kansas native range managers, I ask that you strive to have old world bluestems included on the noxious species list.

Attachment 17  
SCANR 10-22-15

TO: Special Committee on Agriculture and Natural Resources  
Rep. Sharon Schwartz, Chair

The spread of Old World Bluestem grass is a serious threat to our Kansas prairies. These invasive species of grasses, which were purposely planted along highways and roads, have spread to pastures in most parts of Kansas and are particularly bad in the Flint Hills and Red Hills regions. The spread of Old World Bluestem could mean that our native prairies will eventually be dominated by one species of plant that offers little to livestock and almost nothing to wildlife.

Here in the Flint Hills we work hard to preserve the last of the tallgrass prairie ecosystem. Being good stewards of our grassland is good for our cattle, good for wildlife and good for the environment.

Unless Kansas ranchers, farmers and state agencies take steps to eradicate invasive noxious weeds such as Old World Bluestem we could end up losing one of our state's most valuable resources...our native grasslands.

I urge your committee and the Kansas Legislature to declare that Old World Bluestem is a noxious weed. This designation would help our efforts to eradicate it from our native prairies.

Thank you for your consideration.

Larry R. Patton, President  
Protect the Flint Hills  
5695 N.W. 50<sup>th</sup>  
El Dorado, Kansas 67042  
620-752-3455

Attachment 18  
SCANR 10-22-15

# Old World grasses, New World problems



< 1 of 21 >

Brian Obermeyer, Nature Conservancy of Kansas, checks a Chase County pasture. The blonde grass is an Old World bluestem, which could overtake native grasses and offer little to cattle and wildlife. **Michael Pearce** - The Wichita Eagle

BY MICHAEL PEARCE  
*The Wichita Eagle*

*Correction: Rancher Bill Edwards is from Olsburg. An earlier version of this story listed an incorrect city.*

Rancher Bill Edwards is fighting an enemy that threatens to overrun his Flint Hills pastures, robbing his cattle of nutritious grasses and leaving the meadowlarks, box turtles, bobwhite quail and other wildlife in the same native prairies without suitable habitat.

Edwards, 60, of Olsburg, is holding his own against an invasive species called Old World bluestem grasses, but what he sees on other property has him worried about the future.

"When you drive from Manhattan to Cottonwood Falls, you can see it about 100 percent of the time," Edwards said of the about 55 miles through the heart of the Flint Hills. "A lot of it is in the ditches, but it's moving out into the pastures."

The spread of the Old World bluestems also has some of the Midwest's top grassland and conservation experts equally worried.

"There are invasive species that are just a nuisance, and then some that are real problems. These are real problems," said Brian Obermeyer, Nature Conservancy of Kansas. "The bad thing about (Old World bluestems) is that they release a chemical that is toxic to other plants."

That means we could end up with prairies that are largely dominated by one species of plant that offers little to livestock and almost nothing to wildlife.

Experts say the continued spread of the invasive grasses could have a huge impact on Kansas' estimated 15.5 million acres of grazing lands and the state's beef industry valued at about \$7.75 billion in 2013, according to Kansas Livestock Association.

It could be even more devastating to wildlife.

"Once they start to take over a landscape, it eliminates the beneficial plants, like forbs and grasses that provide seeds, fruits and bugs – things like prairie chickens and other grassland birds feed on," said Ron Klataske, Audubon of Kansas director. "It's a huge threat to wildlife. Huge."

Where it spreads, it also could wipe out vibrant wild flowers which are drawing increased numbers of tourists to Kansas prairies.

The Old World varieties should not be confused with Kansas' native species of big and little bluestem grasses, which provide food to livestock and food and shelter to wildlife.

### **Introduction gone wrong**

Kansas is currently home to two main species of Old World bluestem grasses – Caucasian and yellow. Both were originally imported to America from Europe, Africa and Asia in the early 1900s by agronomists hoping for something better than what was supplied by Mother Nature.

Karen Hickman, Oklahoma State University professor of natural resource ecology and management, said the Old World bluestems remain popular in parts of the southern U.S. as a forage for livestock. The plants grow well in dry areas where little else grows, and left with no other options, cattle will eat the plants.

Hickman said the Old World bluestems have been popular because the initial seed is relatively cheap, it grows fast and produces a lot of seed to support itself. As well as by seeds, the plants can spread by runners atop the soil, and roots beneath the soil that sprout new plants.

"It's over taken a lot of the native landscapes in western Oklahoma and western Texas," Klataske said. "It's now about the only plant in those areas. It's certainly contributed to the decline in several wildlife species, like lesser prairie chickens."

Old World bluestems have been in Kansas for at least 100 years, said Hickman, who researched the grass' negative impacts on wildlife in the 1990s. It was planted in places left desolate by the Dust Bowl of the 1930s and drought of the 1950s. Walt Fick, a Kansas State professor of range management, said it was often planted under the federal Soil Bank program of about 60 years ago, when farmers were paid to take croplands out of production. Some fields are still planted to the grasses because cut at the right time, it can make good hay. When the hay is hauled to other pastures, it often contains grass seed, allowing the invasive grass to spread.

Obermeyer said the inexpensive, quick-growing grasses were probably purposely planted by highway and road departments in ditches and medians for many years. From there, it easily spreads.

Kansas cattle will normally only feed on the invasive plants for a couple of weeks before it's no longer palatable. Instead, cattle prefer native grasses and plants that stay tender for months and give better weight gains.

Most parts of Kansas now have the grasses, though it's particularly bad in the Flint Hills and the Red Hills west of Medicine Lodge.

"The jury is still out on where it's going to get hit the worst," said Obermeyer, "but no place is it going to be good."

Randy Rodgers, a retired Kansas Department of Wildlife, Parks and Tourism upland bird biologist, said the problem has become noticeably worse over the past five years. Old World bluestems did well during the drought of about two to five years ago and easily out-competed native prairie plants that suffered from the dryness.



"It was like the stuff just exploded," said Rodgers, of Hays. "I've never seen anything else like it, that will completely take over an area and not allow native vegetation to grow. It's been pretty scary to watch."

### **The fight is on, and not easy**

Compounding the problem, Rodgers said, is that many land managers can't identify the grasses, which often don't stand out amid native prairie to the casual eye. It is most identifiable in the fall, when Caucasian bluestem stands out as shiny blonde patches against the brown and russet colors of native plants.

Jane Koger, a Chase County rancher, has been concerned about Old World bluestems in her pastures for several years. It's only been within about the past year that she's heard of workshops trying to educate landowners and conservationists about the potential problems.

Obermeyer, who has worked with Koger on her property, said one of the keys is to be able to locate patches of Old World bluestems when they first appear in an area, when they're the most easily handled. Killing Old World bluestems has never been easy, or inexpensive.

Several days a year Edwards puts on a backpack sprayer with Round-Up or a similar kill-all herbicide and patrols his pastures from horseback. If the Old World grasses have been long established, it may take repeated sprayings to kill any plants that rise from seeds deposited through the years.

K-State's Fick has been doing research on what will work on the Old World plants, with much of the research on Koger's ranch. He's seen some recent success with Arsenal and similar herbicides that seem to kill the Old World bluestems without being fatal to native grasses. But the results don't come cheap.

Fick said just the cost of the chemical, not including the tools and labor needed to apply it, can run up to about \$30 per acre.

"That's not too bad of a cost if you're only spraying small patches," he said. "But if you're talking about some larger areas, it runs into a lot of money. It also may take repeated spraying, and then there's the cost of reseeding if that's needed. At least on small spots mother nature will fill those back in with good grass."

Obermeyer said he and others hope the Legislature will soon declare the Old World bluestems noxious weeds.

As well as drawing attention to the problem, such a listing would probably open programs to help landowners with control methods and cost. It could also force governments to eradicate the plants from ditches and public lands.

"That's about what's going to have to happen," Koger said as she walked one of her infested pastures. "It just has to happen. You can look out here and see how much it has expanded in just the past five years. We have to get on top of it, soon."

*Reach Michael Pearce at 316-268-6382 or mpearce@wichitaeagle.com.*

### **OTHER PROBLEMATIC INVASIVE SPECIES IN KANSAS**

Zebra mussels arrived in the U.S. about 25 years ago in the bilges of ships traveling to the Great Lakes, and got into Kansas about 12 years ago. They can clog intake pipes for water plants and cost millions of dollars annually to control across the nation. Their sharp shells can make swimming and wading hazardous and painful.

European starlings have been in Kansas and the U.S. for over 100 years, and were imported by a New Yorker who liked a reference to the birds in one of Shakespeare's writings. Starlings compete with native birds for nesting areas and food, and gathering in large flocks can damage some crops.

Asian carp include silver and bighead carp, both of which were imported into the U.S. about four decades ago by aquaculturalists. The fish escaped into nearby rivers and streams. As well as out-competing native fish, silver carp frequently jump as a power boat passes sometimes injuring boaters.

Sericea lespedeza was planted in southeast Kansas in the 1930s, on lands left barren by strip mining. It has since spread to most of the state, where it often out-competes desirable native vegetation and does little for livestock and wildlife.

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