

**MINUTES**

**SPECIAL COMMITTEE ON ENERGY, NATURAL RESOURCES,  
AND ENVIRONMENT**

November 16, 2001  
Room 519—Statehouse

**Members Present**

Representative Joann Freeborn, Chairperson  
Senator Christine Downey  
Senator Jean Schodorf  
Senator Robert Tyson  
Representative Garry Boston  
Representative Ruby Gilbert  
Representative Becky Hutchins  
Representative Bill Levinson  
Representative Carlos Mayans  
Representative Ray Merrick  
Representative Judy Showalter

**Members Absent**

Senator Lana Oleen

**Staff Present**

Raney Gilliland, Kansas Legislative Research Department  
Deb Hollon, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Nikki Feuerborn, Acting Committee Secretary

**November 16, 2001  
Morning Session**

The meeting was called to order by Chairperson Joann Freeborn at 10:10 a.m. with a review of the agenda (Attachment 1).

Mary Torrence, Revisor of Statutes, presented a review of the Kansas statutes as they pertain to groundwater management district boards of directors (Attachment 2). Any proposal to change the number of members currently serving on the board of directors must be included in the notice of meeting of the board of directors.

Raney Gilliland, Kansas Legislative Research Department (KLRD), distributed and explained potential financing options for Groundwater Management District No. 2 (Attachment 3).

In response to questions from the Committee regarding fee rates of groundwater management districts (GMD), Mary Torrence, Office of the Revisor of Statutes, stated that the language in the statute does not prohibit GMD's from charging more for industrial and municipal usage either inside or outside the district (place of withdrawal) if no one objects to it. A lawsuit or protest of some sort to challenge the action of the Board could be filed.

In response to Committee questions on Item 5 (varying charges for withdrawal of water), staff said the language of the statutes does not prohibit the differential in charging of more per acre foot for commercial, municipal or agricultural use if no other users object to the charges. The same principle applies to the differential rates charging for water withdrawal used inside or outside the GMD unless there would be a law suit or a protest of some sort to challenge the differential rates. Such differentials are not prohibited by the *Constitution*.

The Committee discussed the fact that Items 4 and 5 (rate differentials for usage and location) are already allowed for GMDs and should be considered by them. Item 6 (requirement of state agencies to reimburse GMD for data collection service) also should be encouraged. Options included the passage of Item 2 when there was a degree of trust in the GMD boards and the passage of Item 3 if there was total trust in the GMD boards. Also legislation could be passed dealing only with the Equus Beds GMD.

The Committee suggested that the Committee Report reflect that the Committee strongly encourages the following options:

- Option 4—Adopt legislation requiring user fees or a higher withdrawal charge or user fees for water used outside GMD district boundaries.
- Option 5—Adopt statutory language that establishes varying charges for withdrawal of water for each use: agricultural, municipal, industrial.

Jamie Clover Adams, Secretary of Agriculture, reviewed the mutual benefits derived from the Groundwater Management Act which was passed in 1972 in order to manage and enhance the management of water in certain areas (Attachment 4). Passage of the act also brought local perspective to the decisions that were being made under the Act. The

numbers cited in Secretary Adams' report are averages and there is a great deal of difference in the interaction between the Division of Water Resources and the GMD, all depending upon the district. The value of the information received from the GMDs by the Division of Water Resources is approximately \$160,000 per district including what they do to assist the public.

Karl Mueldener, Kansas Department of Health and Environment, presented information on estimating the value of services, including data provided by the GMDs (Attachment 5).

Maurice Korphage, Director of the Conservation Division of the Kansas Corporation Commission, presented a fiscal impact analysis of the interaction between his agency and the GMD's (Attachment 6). The Committee suggested that (1) state agencies re-examine the relationships that have with the GMD's and the value they provide to the agency and also what value the agency provides to the GMD; (2) GMD board members need to know what kind of services are exchanged and what legitimate funding is available; and (3) Committee members need to understand the importance of the connection between state and local agencies.

Senator Downey presented language which would be used as a recommendation from the Committee regarding the establishment of a separate statutory authority for the Equus Beds GMD #2 (Attachment 7). She explained that the purpose of the language was to take the concept in the bill that was passed, to recognize that this GMD's financing method that was established in 1972 works really well for four out of the five GMDs because they have a large acreage and they have large acreage feet that is being withdrawn. She noted that after reviewing all that data, that financing method does not work well for GMD #2 because it is basically land-bound and the expectation is that the actual acres on which to assess will continue to decline due to inroads of cities and urban areas. She noted the district is capped out statutorily, and this proposal would allow that cap to rise for the district. The other GMDs requested not to be included as their financing method is serving them very well and they have room to grow on their caps on their water withdrawal rates. She stated that two years ago the Governor issued an Executive Order which established KDHE as the ultimate authority in managing potential and existing pollution. That particular charge was given to the Kansas Department of Health and Environment (KDHE) just for GMD #2. That policy has already been established so new ground is not being established as far as setting GMD #2 aside, it has already been set aside. She noted the \$1.19 was the figure that was estimated in the computation of inflationary increases so they would not have to return to the Legislature in the near future. The other two concerns addressed:

1. Is this GMD doing what it needs to do, more than it needs to do, or less than what it needs to do? These should be re-examined by the district constantly to make sure they are using taxpayer resources wisely.
2. Are there other ways to fund this GMD? They should include such ideas as differentiated rates based on water usage or types of usage, or water used outside the district, additional pay for service contracts that might be available *i.e.* using some of the conservation fee funds, and the option of annexing additional areas into the district.

Senator Downey stated that this suggestion would require the deletion of the whole governance issue in the bill (SB 264) which is in the House Environment Committee. The suggestion of lowering the cap to \$1.00 would give six years for a review and provide an incentive to look at other funding. A sunset could be added to the bill which would give the Legislature an opportunity to revisit the issue and examine what is happening with the western Kansas aquifer, and the possible effects on GMD's at that time. Also mentioned was a phase-in approach which could be established beginning with the \$.65 acre and phasing in \$1.19 per acre foot by 2012. This would allow GMD #2 to raise its total revenue by \$160,000 in ten years if its elected board of directors chooses to do this based upon the district's needs.

*Senator Downey moved that the members of the Special Committee on Energy, Natural Resources and Environment support legislation which establishes separate statutory authority for the Equus Beds GMD #2. Included in this recommendation is support for an increase in the cap on water withdrawn in the district from its current \$.65 per acre foot to \$1.19 per acre foot of water withdrawn. Motion was seconded by Senator Schodorf.*

*Representative Boston made a substitute motion to place the cap at \$.80 instead of the \$1.19 per acre foot of water withdrawn. Motion was seconded by Representative Hutchins. Motion failed.*

*Senator Downey withdrew her motion and Senator Schodorf withdrew her second.*

*Senator Downey moved that the members of the Special Committee on Energy, Natural Resources and Environment support legislation which establishes separate statutory authority for the Equus Beds GMD #2. Included in this recommendation is support for an increase in the cap on water withdrawn in the district from its current \$.65 per acre foot to \$1.19 per acre foot of water withdrawn. In addition, the Committee recommends that the board of directors of GMD #2 review thoroughly current and future programs of the GMD to determine their necessity and cost effectiveness. Further, the Committee encourages the board to seek additional funding for programs which the board determines are necessary for the GMD's operation from those entities which benefit from the water withdrawn and ultimately consumed in order to limit the potential increase in the water withdrawal rate. Motion was seconded by Senator Schodorf. Motion failed due to lack of majority on a vote of five to five.*

*Representative Boston made a conceptual motion to change the acre foot withdrawal rate beginning at \$.80 per foot with a rolling cap reviewed every three years by the board of directors in municipal, commercial, and agricultural areas and have various rates as needed. This would sunset in six years and be subject to post audit. The motion died for lack of a second.*

*Senator Tyson moved that the Special Committee on Energy, Natural Resources, and Environment support an increase in the cap on water withdrawn in GMD #2 from its current \$.65 per acre foot to \$1.19 per acre foot of water withdrawn. The Committee encourages the Board of Directors of GMD #2 to establish a higher withdrawal rate for water ultimately used outside the district. Motion was seconded by Senator Downey. Motion carried by a seven to three vote.*

During Committee discussion, some members voiced concern that higher rates charged outside the district would be the only funding source. The Committee also discussed adding additional pay for service and annexation of territory as topics which could generate additional income. Some members indicated that all districts should be treated the same and making different rules for just one district would become very confusing and singles one out from being different from the others.

*Senator Downey moved that additional language be added to the Committee Report indicating the Committee encourages the board to seek additional funding for programs which the board determines are necessary for the GMD's operations from those entities which benefit from the water withdrawn and ultimately consumed in order to limit the potential increase in the water withdrawal rate including such ideas as differentiated rates based on usage or place of use, additional pay for service contacts with state agencies, and the annexation of additional areas. Motion was seconded by Representative Levinson. Motion carried.*

Chairperson Freeborn recessed the meeting at 12:05 p.m. for the lunch break.

### **AFTERNOON SESSION**

The Chairperson reconvened the meeting and the minutes of the August 27, 2002 meeting and the October 22-23, 2002 meeting were approved.

*Representative Mayans then made a motion to approve the Committee Report on the Equus Beds issue. Representative Levinson seconded the motion. The motion carried.*

The Committee then approved the recommendations for inclusion in the report dealing with seismic risk around federal reservoirs. The Committee approved the Committee report on this issue.

The Committee then adjourned.

Prepared by Nikki Feuerborn  
Edited by Raney Gilliland

Approved by Committee on:

July 3, 2002