

MINUTES

SPECIAL COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

September 18-19, 2006
Room 514-S—Statehouse

Members Present

Senator Mark Taddiken, Chairperson
Representative Dan Johnson, Vice-Chairperson
Senator Marci Francisco
Senator Carolyn McGinn
Senator Ralph Ostmeyer
Representative Richard Carlson
Representative Mitch Holmes
Representative Forrest Knox
Representative Steven Lukert
Representative Larry Powell
Representative Josh Svaty

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Becky Krahl, Kansas Legislative Research Department
Daniel Nibarger, Kansas Legislative Research Department
Lisa Montgomery, Office of Revisor of Statutes
Judy Seitz, Committee Secretary

Conferees

Constantine Cotsoradis, Assistant Secretary, Kansas Department of Agriculture
Greg Foley, Executive Director, State Conservation Commission
Earl Lewis, Operations Manager, Kansas Water Office
Dick Koerth, Assistant Secretary, Kansas Department of Wildlife and Parks
Herbert Graves, Executive Director, State Association of Kansas Watersheds
Brent Haden, Assistant Counsel, Kansas Livestock Association
Kent Askren, Water Resources Specialist, Kansas Farm Bureau
Ron Gaches, Executive Director, Kansas Society for Professional Engineers
Brian Silcott, City Manager, Osage City
Richard Cram, Director of Policy and Research, Kansas Department of Revenue
Dennis Hupe, Director of Field Services, Kansas Soybean Association
Ray Hammarlund, Director, Agriculture Marketing and Community Development, Kansas
Department of Commerce
David Davies, Deputy Assistant Attorney General, Kansas Attorney General's Office

Ron Hammerschmidt, Director, Division of Environment, Kansas Department of Health and Environment
Tom Stiles, Section Chief, Office of Watershed Planning, Kansas Department of Health and Environment
Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment

Others Attending

See attached list.

Monday, September 18 Morning Session

The meeting was called to order at 10:00 a.m. by Chairperson Mark Taddiken.

Chairperson Taddiken said these two days of meetings in September have been scheduled to study dam inspections, licensing and bonding requirements for biodiesel fuel production, and the Colorado water litigation issue. Hearings on the regulation of county fairs will be scheduled for November.

Chairperson Taddiken introduced the staff and welcomed Daniel Nibarger as a Legislative Fellow from the Kansas Legislative Research Department.

Vice-Chairperson Johnson thanked the members of the House Agriculture Committee for attending the meeting. He said there are some serious issues to be addressed.

Constantine Cotsoradis, Kansas Department of Agriculture, provided an overview on the dam safety program ([Attachment 1](#)). He said there was extensive discussion on this issue during the 2006 Legislative Session. He told the Committee members that the Legislature did allocate funding for three new positions in this program; however, there are still problems with unsafe dams. He provided a list of high and significant hazard dams (see Attachment 1). Mr. Cotsoradis outlined a proposed program to address the issue of inspection of dams, repairing or upgrading dams, or both. Part of the proposed program involves local units of government that have the necessary authority under state law to control downstream development.

Prioritization of the dams is necessary in order to determine eligibility for the cost-share program to help owners rehabilitate deficient dams. The success of these proposals requires cooperation among the Kansas Water Authority, the State Conservation Commission, and the Kansas Department of Agriculture.

Mr. Cotsoradis stood for questions.

Matt Scherer, Kansas Department of Agriculture, Division of Water Resources, also responded to questions from the Committee.

Greg Foley, State Conservation Commission, presented information about the State Conservation Commission (SCC) Watershed Dam Construction Program (WDCCP) ([Attachment 2](#)).

He reviewed the Kansas Watershed District Act, powers of the districts, general planning, financing, and the status of Kansas watershed districts. He also discussed the funding of the WDCP.

Mr. Foley took questions from the Committee.

Mr. Scherer also responded to questions.

Mr. Foley discussed the watershed dam construction program, FY 2007 rehabilitation (see Attachment 2-17).

Mr. Gilliland requested clarification regarding the use of rehabilitation and repair funds for FY 2006-2007.

Earl Lewis, Kansas Water Office, offered testimony on small dam safety and rehabilitation (Attachment 3). He presented the policy section on dam rehabilitation which was approved by the Kansas Water Authority in November 2005 as a part of the Kansas Water Plan. The Kansas Water Authority has approved a recommended FY 2008 budget of \$1,055,000 within the State Conservation Division, to be used for watershed dam rehabilitation and construction.

Mr. Lewis stood for questions.

The meeting adjourned for lunch at 11:45 a.m.

Afternoon Session

Chairperson Taddiken called the meeting to order at 1:30 p.m.

Dick Koerth, Kansas Department of Wildlife and Parks (KDWP), presented comments on the maintenance of dams (Attachment 4). He told the members of the Committee that KDWP is responsible for the maintenance of 40 state fishing lakes. He mentioned specifically the dam at the Leavenworth State Fishing Lake, which required repairs. He stated that the Division of Water Resources (DWR) was involved in the dam repair and its assistance and cooperation was appreciated. Mr. Koerth stated that the KDWP does not have any responsibility for maintenance of dams at the federal reservoirs on which the KDWP operates state parks. He distributed a list of hazardous dams (see Attachment 4).

Mr. Koerth stood for questions from the members of the Committee.

Herbert Graves, State Association of Kansas Watersheds (SAKW), offered testimony (Attachment 5) with the following suggestions for the Committee:

- Registration of breach inundation maps in the counties and notification of affected landowners;
- County floodplain management of breach areas; and
- Keeping the responsibility of regulating the safety of all jurisdiction dams within the Division of Water Resources is important for a solid dam safety program.

Mr. Graves stood for questions.

Brent Haden, Kansas Livestock Association (KLA), presented testimony ([Attachment 6](#)) regarding the inspection and maintenance requirements for high and significant hazard dams. The KLA believes the Legislature's allocation of funds to allow the DWR to conduct inspections was good; however, there are still problems with repairing high hazard dams. The KLA supports the KDA's funding plan for repairing dams.

Mr. Haden answered questions from the Committee.

Kent Askren, Kansas Farm Bureau (KFB), offered comments ([Attachment 7](#)) on dam safety and inspections. The KFB believes that every regulated dam in Kansas should have a breach inundation zone map. It was suggested that state funding with supplemental funding be used to map the breach inundation zones. After mapping is completed, an inventory of dams needing upgrades could be established and prioritized.

Mr. Askren stood for questions. It was requested that the Special Committee receive a review of the funding for dam inspection and rehabilitation, and how those funds are used.

Ron Gaches, Kansas Society of Professional Engineers (KSPE), presented comments ([Attachment 8](#)) concerning the liability of dam owners. He wanted to address the legal and financial issues regarding who should bear the burden for maintenance of dams.

Mr. Gaches took questions from the Committee. He will get back to the Committee regarding a question on the liability of the engineers employed by the state who perform dam inspections.

Brian Silcott, City Manager of Osage City, provided testimony ([Attachment 9](#)) on dam safety issues and how they impact small municipal water systems. He told the Committee that Osage City has undertaken a dam rehabilitation study that was used for mitigation by the Division of Water Resources, Kansas Department of Agriculture. He urged the Committee to consider municipalities and water quality standards in crafting long-term solutions.

Mr. Silcott answered questions from Committee members and staff.

It was noted that the Kansas Association of Counties (KAC) had been invited to offer testimony on the issue of dam safety but decided not to appear.

Chairperson Taddiken said that the KDA has presented a proposed program for dam safety (see Attachment 1) and asked conferees to submit written comments regarding the proposal. He also suggested that the proposal be forwarded to the KAC for its input.

A discussion on zoning and city ordinances regarding dams was held. Mr. Cotsoradis answered questions regarding the fee for inspection of dams referring to KSA 82a-303b ([Attachment 10](#)).

HB 2867, concerning water and watercourses; relating dams ([Attachment 11](#)), was adopted by the House during the 2006 Legislative Session, but did not receive approval by the Senate. Hearings were held in the Senate, but there was not enough time to finish discussion on the bill.

The meeting adjourned at 3:00 p.m. The next Committee meeting is at 9:00 a.m. Tuesday, September 19, 2006.

Tuesday, September 19

Morning Session

The meeting was called to order by Chairperson Taddiken at 9:00 a.m.

Chairperson Taddiken opened hearings on the licensing and bonding requirements for biodiesel fuel production. He noted that during the 2006 Legislative Session, a biodiesel incentive fund was created in order to encourage production of biodiesel fuel in the state, but some clarification may need to be made on several aspects of the issue.

Richard Cram, Kansas Department of Revenue (KDOR), presented testimony (Attachment 12) regarding issues concerning biodiesel production/distribution licensing and bonding requirements. Mr. Cram introduced members of his staff: Steve Neske, Edie Martin, Cindy Mongold, and Rick Clelland. The KDOR has published Notice 06-06 to answer questions concerning biodiesel. He said there are three types of licenses, but the discussion will cover the manufacturer's license and distributor's license. Biodiesel producers are required to have a manufacturer's license, and must post a minimum of an average of three months of liability insurance, \$5,000 cash escrow, or surety bond. A distributor's license requires the posting of a minimum of an average of three months' tax liability, a \$1,000 cash escrow, or surety bond. The definition of "manufacturer" was discussed. Biodiesel is subject to motor fuel tax; however, biodiesel that is dyed and is used for nonhighway purposes is exempt from motor fuel tax. He told the members of the Committee that KDOR is seeking clarification on SB 388 (Attachment 13) as to when the deposits to the incentive fund are to be made and when payment will be made to the biodiesel producer. The KDOR has no recommendations but is discussing legislative changes which may be needed to the motor fuel tax statutes relating to the production and sale of biodiesel fuel. Mr. Cram noted the comments of Mr. Grover McKee (see Attachment 1-9) regarding his concerns about biofuels subsidies, technology changes, and the "home brewer."

Mr. Cram stood for questions.

Dennis Hupe, Kansas Soybean Commission, testified (Attachment 14) in support of making permanent the interim KDOR revisions to KSA 79-3408. Also distributed were copies of a letter from Mr. Grover McKee, a map of commercial biodiesel production plants, and a list of biodiesel retail pumps and biodiesel bulk in Kansas (see Attachment 14).

Mr. Hupe answered questions.

Ray Hammarlund, Kansas Department of Commerce (KDC), offered comments (Attachment 15) regarding biodiesel plants. There are numerous proposed projects with most of them in the feasibility stage. The KDC, together with investments by other divisions of KDC, has invested approximately \$6.1 million in biofuels projects in Kansas. He also distributed a map showing existing plants and proposed projects (see Attachment 15-4).

Mr. Hammarlund stood for questions.

Senator Taddiken inquired as to whether there is an education component on the quality of the product. Dennis Hupe also spoke to specifications of the products coming out of these biodiesel plants. Concern was expressed over water usage needed for the production of ethanol and biodiesel.

Senator McGinn announced the signing ceremony for the National Partnership Agreement between the Kansas Land Trust and NRCS Ranch Land and Farm Land Protection Program at 9:00-

11:00 a.m. on Thursday, November 9. Location of the ceremony will be approximately 6 miles northeast of Fort Riley.

A ten-minute recess was called at 10:15 a.m.

Chairperson Taddiken reconvened the meeting at 10:30 a.m. He said the issue of the Colorado water litigation would be studied.

Constantine Cotsoradis, Kansas Department of Agriculture (KDA) ([Attachment 16](#)), updated the Committee on the status of the Arkansas River Compact and related litigation in *Kansas v. Colorado*; the Republican River Compact settlement in *Kansas v. Nebraska*; and the fiscal needs of the KDA to monitor and enforce these compacts. He also reported on the Missouri River and Ozark Plateau issues.

In the next few months, a recommendation will be made to the U.S. Supreme Court to adopt a final decree in the *Kansas v. Colorado* case. It has yet to be determined if Colorado will be in compliance for the ten-year period (1997-2006). The funding to monitor Colorado's water use and compliance with the Compact will be shifted from the Attorney General's Office to the KDA. The KDA is requesting continued funding for FY 2008 to monitor compliance and enforce the terms of both compacts and U.S. Supreme Court decrees.

Mr. Cotsoradis said that it is unlikely that Nebraska and Colorado will achieve compliance with the Republican River Compact settlement during the first compliance periods. Nebraska has overused its total allocation for the first three years (2003 - 2005) by 104,195 acre-feet (AF) and Colorado was over its total allocation for three years (2003 - 2005) by 104,195 AF, an average of 34,732 AF per year. Kansas has been in compliance with the Republican River Compact for the past three years.

The Corps of Engineers operates a system of six reservoirs on the upper basin states (North Dakota, South Dakota, and Montana). The downstream (river) states want to maintain flows for navigation and water supply. Environmental and endangered species also became an issue during the review. During the drought in the 1980s, there was controversy over the operation of the reservoir system. The Corps of Engineers published its Final Environmental Impact Statement (Final EIS) on the Special River Master Manual Review in 2004. The State of Missouri has now filed a new lawsuit against the Corps. Kansas chose not to participate in this litigation.

Mr. Cotsoradis reported that the upper Ozark Plateau Aquifer system contains fresh water in southwest Missouri and northeast Oklahoma; however, in Kansas the water quality of the upper system is often poor and unfit for domestic use. A moratorium on new water appropriation from the aquifer systems was established in 2004 as a permanent regulation. A group (Tri-State Water Resource Coalition) was formed to evaluate the current demand for water by the members, what demand will be in 2050, and the possible source(s) that will be available. A study is being conducted by Black and Veatch and the Little Rock Corps of Engineers on these issues. A final first report will be presented to the Coalition and will be made public in late September.

Mr. Cotsoradis stood for questions from Committee members and staff. Dave Barfield, Division of Water Resources, Kansas Department of Agriculture, also answered questions. Joe Fund, Chief Fiscal Officer, Kansas Water Office, also answered questions regarding funding.

Senator McGinn had questions regarding the use of the reimbursement from Colorado for damages and how the Legislature will be involved in the disbursement of these funds.

David Davies, Kansas Attorney General's (AG's) Office, responded to the issue of the river master. The conflict regarding the Arkansas River goes back to 1901. Kansas entered into the Compact with Colorado in 1949. Colorado has breached the Compact ever since. Kansas then requested a special river master. This request, which was denied by the U.S. Supreme Court, said that Kansas should seek recourse with the Colorado water courts. Mr. Davies stated that the Division of Water Resources in the Department of Agriculture has been a tremendous partner with the AG's Office in the *Arkansas River* and *Republican River* cases. He also said that his office is crafting out the relationship between Kansas and neighboring states into the future. He noted that Nebraska had made a good faith effort to comply with the Compact, but it is still struggling.

Mr. Davies commented that water is very important to the Kansas economy. He also said that Kansas must be vigilant with its responsibilities under these compacts. He reviewed a timeline of the future events in these litigations. In the *Kansas v. Nebraska* case, potential remedies will be discussed regarding Nebraska's shortfall of water, discussing potential remedies to its shortfall, and what kind of remedy will be requested if Kansas goes forth in litigation.

He said that Kansas will be negotiating with Nebraska and Colorado regarding these litigations.

Mr. Davies said that in June, the Kickapoo Nation filed suit against several agencies regarding several issues that included water rights. Meetings have been set with attorneys and representatives from the Kickapoo Nation to negotiate these issues.

Mr. Davies stood for questions. Mr. Fund also answered a question.

Ron Hammerschmidt, Kansas Department of Health and Environment (KDHE) said that Kansas is surrounded by four states and borders three different Environmental Protection Agency (EPA) regions. He noted that Kansas is both an upstream and downstream state. He mentioned a federal case, *Oklahoma v. Arkansas*, in which the ruling was made that Oklahoma can enforce its state water quality requirements at the state line. That case does not address water quantity. Mr. Hammerschmidt said there are a number of mechanisms for achieving water quality, primarily through the development of total maximum daily loads (TMDL) for the pollutants of concern. He said there are three approaches for achieving water quality standards:

- For the two states to meet and come to an agreement and keep the federal government out of it;
- A joint state/federal approach where the states and applicable EPA region would develop the TMDLs; or
- Go back to the federal court system and demand they do this.

Mr. Hammerschmidt reviewed the relationships with Nebraska, Oklahoma, and Missouri in regard to water quality. He said that there has been no work done regarding water quality with Colorado, pending results of the litigation.

Tom Stiles, KDHE, ([Attachment 17](#)) discussed the water quality aspects of the Arkansas River between Kansas and Colorado. Flood irrigation in Colorado leaches salts and then the return flows re-enter the river. The Arkansas River at the Colorado state line has the highest salt content of any stream in Kansas. The elevation of salts in the irrigation supply has reduced crop yields in Kansas. The Compact with Colorado does not explicitly consider water quality; however there is a requirement for no depletion of "usable flows" to include water quality.

Mr. Stiles and Mr. Hammerschmidt stood for questions. Dave Barfield, Division of Water Resources, KDA, also answered questions.

Chairperson Taddiken said that there is a potential to receive reimbursement from Nebraska. When Kansas received reimbursement from Colorado, the Kansas Legislature had a statute in place as to how the funds would be distributed. He said the Committee should consider recommending the introduction of a bill that would specify in the statutes how that money would be appropriated should the state receive a settlement. Chairperson Taddiken requested that staff forward to Committee members bullet points of what provisions are in the Kansas statutes regarding Colorado money, so they could be used as reference points for discussion at the next meeting.

Vice Chairperson Johnson requested that staff provide the Committee with a draft for the dam inspection that was suggested by the Kansas Department of Agriculture to be reviewed prior to the next meeting.

Senator McGinn requested information from the staff on how the dam inspection money is being used.

Representative Powell had a written list of questions regarding dam inspections. Staff will forward the responses to these questions in order for the Committee to review and discuss them at the next meeting.

Gary Blackburn, KDHE, presented a report on the Cherokee County Superfund Site (Attachment 18). He stated there is concern about the significant contribution of metals coming in from Missouri drainage, coming through Kansas, and going into Oklahoma.

Mr. Blackburn also had a diagram of the City of Galena showing the abandoned mine shafts that are there. He also showed photos (see Attachment 18-7 and 18-8) of the Green Parrot building (built over mined-out property) that recently collapsed in Galena.

Mr. Blackburn stood for questions.

Chairperson Taddiken will write a letter to the Legislative Coordinating Council (LCC) requesting the Committee be allowed to have a broader study of the Colorado water issue because of concerns introduced today and the amount of money involved in this issue. Chairperson Taddiken said the Committee will stay within the time frame allowed by the LCC. Mr. Gilliland said the LCC will meet in October and the Committee does not meet again until November.

The meeting adjourned at 12:02 p.m.

Prepared by Judy Seitz
Edited by Raney Gilliland

Approved by Committee on:

November 28, 2006

(date)