

MINUTES

SPECIAL COMMITTEE ON NATURAL RESOURCES

November 13, 2017
Room 548-S—Statehouse

Members Present

Representative Tom Sloan, Chairperson
Senator Dan Kerschen, Vice-chairperson
Senator Rick Billinger (Substitute Committee Member for Senator Estes)
Senator Marci Francisco
Representative Doug Blex
Representative Ken Rahjes
Representative Ponka-We Victors

Member Absent

Senator Bud Estes - Excused

Staff Present

Heather O'Hara, Kansas Legislative Research Department
James Fisher, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Tamera Lawrence, Office of Revisor of Statutes
Matt Sterling, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees

Dr. Mary Hill, Professor of Geology, University of Kansas
Greg Wilson, representing the Kansas Water Assurance Districts
Burke Griggs, Associate Professor, Washburn University School of Law
Edward Martinko, Director, Kansas Biological Survey
James Butler, Section Chief and Senior Scientist, Geohydrology, Kansas Geological Survey
Tracy Streeter, Director, Kansas Water Office
Earl Lewis, Assistant Director, Kansas Water Office
Jaime Gaggero, Director, Bureau of Water, Kansas Department of Health and Environment
Jackie McClaskey, Secretary, Kansas Department of Agriculture
Susan Metzger, Deputy Secretary, Kansas Department of Agriculture

Others Attending

See [Attached List](#).

Monday, November 13
Morning Session

Welcome and Approval of Minutes

The Chairperson opened the meeting at 9:05 a.m. and welcomed members, conferees, and guests.

Presentations

The Chairperson recognized Dr. Mary Hill, Professor of Geology, University of Kansas. Dr. Hill reported on the Governor's Water Conference, which was held the previous week in Manhattan, and on how her project connects with issues raised at the conference regarding the Arkansas River ([Attachment 1](#)). She stated although there is extensive data tracing back 60 years, the data has not been collated effectively to give stakeholders a broader understanding of Arkansas River issues. Using data and interactive visualization, Dr. Hill can trace the effects of groundwater pumping, streamflow, changes in groundwater levels, and wet and dry periods. She cited key hydrological points from 1954 forward. Using the data from the project, she stated this knowledge can be expanded regarding hydrology, algal blooms, and reservoir sedimentation.

Dr. Hill responded to Committee members' questions:

- The complexities of the Ogallala High-Plains Aquifer levels may or may not be affected by the new wells being dug in Eastern Colorado; however, the general trend is a depletion in the Ogallala levels; and
- The Ogallala High-Plains Aquifer system becomes less resilient as depletion continues.

Greg Wilson, representing the Water Assurance Districts, contrasted Water Assurance Districts with the Water Marketing Program ([Attachment 2](#)). Providing background, he said the Water Assurance Program Act in 1986 was created as a method for accessing water from federal reservoirs during times of drought. Through a series of questions, he highlighted the differences between the Water Assurance Program Act and the Water Marketing Program Act, concluding that the two programs are mutually exclusive methods through which the public has access to water in federal reservoirs.

Mr. Wilson responded to Committee members' questions stating:

- Only municipalities and industrial users are permitted to be members of a Water Assurance District;
- The five-year renegotiation agreements are based on Kansas Water Office studies showing the amounts of sedimentation and consequent loss of storage capacity; and
- There are multiple "pools" of storage in a given reservoir, but no one pool has priority over another.

Burke Griggs, Associate Professor of Law, Washburn University School of Law, presenting follow-up material from the Committee's October 31 meeting, outlined a recommendation for funding a comprehensive legal review of current Kansas water law ([Attachment 3](#)). He stated the study would address two fundamental problems: the permanent depletion of water resources across the state and the textual problems of the law's accumulated ambiguities and contradictions. He cited previous comprehensive studies in 1944 and 1956, both of which resulted in legislation. However, no recent study or assessment has addressed the changing conditions of water rights or the limited-focus legislation that has created contradictory application of water laws. Further, the 2015 Kansas Water Vision would be greatly enhanced by a comprehensive legal evaluation of water law. Mr. Griggs then laid out a nine-point recommendation that provides scope and also suggests members for the study.

Mr. Griggs responded to Committee members' questions:

- Substantial tribal water rights were granted in 1907 when Native Americans were moved to reservations. Based on that date, they were to be considered first in right according to the Priority Doctrine. Of the four tribes in Kansas, one has negotiated water rights;
- The scope of the proposed study should include long-term water storage in reservoirs, both federal and state regulations, and perhaps water rights' effects on other entities. It would not include long-term adverse effects;
- The proposed study would reduce the potential for litigation over the present ambiguities in water law; and
- The study might impinge on current water compacts with contiguous states, but would have no wider impact.

Edward Martinko, Director, Kansas Biological Survey, presented the agency's responses regarding bathymetric information and funding ([Attachment 4](#)).

James Butler, Section Chief and Senior Scientist, Geohydrology, Kansas Geological Survey, reviewed the agency's funding request for research addressing the depletion of the Ogallala High-Plains Aquifer ([Attachment 5](#)). He included information on stormwater runoff's effects on water quality ([Attachment 6](#)). Responding to questions, he said there is presently no funding for the proposed projects, the projects are not prioritized, and the geographic information system (GIS) works from an aerial survey.

Tracy Streeter, Director, Kansas Water Office (KWO), outlined the agency's continuing efforts to promote stream bank stabilization ([Attachment 7](#)). He stated the 2010 Reservoir Roadmap has provided guidelines for ongoing efforts, which have been focused primarily on John Redmond and Perry reservoirs. Additionally, 95.0 percent of sedimentation occurs during heavy rains, but streambank projects, when implemented in the appropriate watersheds, are cost-effective.

Earl Lewis, Deputy Director, KWO, responded to questions from a previous meeting. He said the industrial water fees are excluded from water permit regulations; a bottled-water fee could raise as much as \$19.0 million, although it would be complicated to implement; and costs for upstream activities are met with a combination of local, state, and federal funds. He also

addressed reservoir water storage, proposed irrigation fees, and drinking water quality ([Attachment 8](#)). A member stated that at the recent Governor's Water Conference, the City of Wichita reported exceptional progress in reducing sedimentation. Responding to questions, Mr. Lewis stated research is the key to address sedimentation, algal blooms, and Ogallala High-Plains Aquifer irrigation issues. To deal with sedimentation in the federal reservoirs, changes can more likely occur through the Kansas Water Resources Act than the proposed federal Farm Bill. One recommendation is to negotiate with the U.S. Army Corps of Engineers (Corps) to divert fees paid to the Corps toward the state's dredging costs.

Jaime Gaggero, Director, Bureau of Water, Kansas Department of Health and Environment (KDHE), presented a \$875,000 request from the agency for programs to address harmful algal blooms, including a pilot project at Milford Reservoir that would include the City of Wakefield ([Attachment 9](#)). Replying to questions, Ms. Gaggero stated nutrient inflow causes algal blooms, yet little is known about why certain blooms create toxins. Some federal resources are available, but there are no federal allocations for system maintenance.

The Chairperson referenced written information from the Kansas Department of Revenue regarding current tax policy related to irrigated land and irrigation equipment and machinery ([Attachment 10](#)). He also cited information regarding an initiative by the City of Chicago to tax bottled water ([Attachment 11](#)).

Jackie McClaskey, Secretary, Kansas Department of Agriculture (KDA), and Susan Metzger, Deputy Secretary, KDA, appeared before the Committee in response to the Committee's October 13 meeting. Secretary McClaskey and Ms. Metzger primarily addressed questions regarding possible fees on irrigated land or irrigated water usage ([Attachment 12](#)). Noting that most property taxes are allocated locally, Ms. Metzger stated the 3.0 million acres of irrigated land in Kansas produce tax revenues of \$38.6 million, of which \$6.7 million is allocated to the State General Fund (SGF). Irrigation adds \$4.0 billion in value and provides a \$24.0 billion contribution to the Kansas economy. The Chairperson urged KDA to work closely and cooperatively with the Kansas Congressional Delegation regarding water issues. Secretary McClaskey cited a letter from the KDA to U.S. Senator Pat Roberts and the Congressional Senate Committee on Agriculture ([Attachment 13](#)). Questioned about specific recommendations KDA conveys to the congressional delegation, Ms. Metzger cited lowering the rental payments for the CRP (Conservation Reserve Program) and offering dryland farming with CRP.

Committee Discussion

Based on the information the Committee gathered from its meetings, the Chairperson invited members to make recommendations to the 2018 Kansas Legislature. Members centered extensive discussion on the recommendations of Mr. Griggs regarding an independent review or study of Kansas water law and practices. The Chairperson declared a consensus on the following issue: the Committee recommends introduction of a bill calling for a legal study covering the nine topics listed by Mr. Griggs on pages four and five of his handout and includes at least the principal investigators and Committee members listed on page five of Attachment 3. A member stated any person employed by the federal government can be invited, but cannot be required to be a Committee member. Mr. Griggs offered to write a draft bill for the Committee.

After further discussion regarding funding for the State Water Plan Fund, the Chairperson declared a consensus on the following issue: the Committee recommends to the appropriate legislative committees to fully fund the State Water Plan Fund at its statutory

amount of \$8.0 million, with the statutory transfers of \$6.0 million from the SGF and \$2.0 million from the Economic Development Initiatives Fund (EDIF), or other sources if more appropriate.

As follow-up to the recommendations, members offered a variety of comments regarding allocation of funds:

- Fees for irrigation, if initiated, should at least cover the cost of well monitoring; that is, groundwater fees should fund those programs that benefit them. No consensus developed regarding irrigation fees.
- More concern was expressed regarding fully funding the State Water Plan Fund than in allocating funds for certain purposes.

Lunch

The Chairperson recessed the meeting for lunch at 11:59 a.m.

Afternoon Session

Committee Discussion

Committee Comments and Recommendations

The Committee reconvened at 1:10 p.m. and continued discussion of recommendations for the upcoming legislative session.

Members continued discussions regarding funding for the State Water Plan Fund. Items of discussion included:

- Whether the Committee report should include an alternative or outline priorities if the State Water Plan Fund is not fully funded;
- Whether the State Water Plan Fund can move from joint funding (SGF, EDIF) and designate EDIF as the sole source of funding; and
- As an alternative approach, offer three choices depending on available allocation of funds: \$8.0 million, \$4.0 million, or \$2.0 million.

The Committee arrived at a tentative consensus: determine what activities regarding water issues are creating problems and what entities are available to address these problems. Priorities can be addressed at a later date.

A motion was made by Senator Billinger and seconded by Senator Kerschen to approve the Committee minutes for October 31, 2017. The motion passed.

Adjourn

The Committee adjourned at 1:30 p.m. No further meeting was scheduled.

Prepared by Gary Deeter
Edited by Heather O'Hara

Approved by the Committee on:

January 10, 2018
(Date)